TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1917

No. 156

J. C. EDGAR, J. M. GIBSON, H. V. HOOVER, and [illegible]

vs.

T. H. EWELL, J. L. STOVER, LOUIS A. [illegible], et al.

ERROR TO THE SUPREME COURT OF THE [illegible]

FILED [illegible]

(18,401.)

(20,461.)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1907.

No. 156.

J. G. BOGARD, J. H. SIMPSON, H. Y. HOOVER, ET AL., APPELLANTS,

vs.

F. H. SWEET, J. L. SWEET, LEONA S. HERD, ET AL.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF OKLAHOMA.

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a No. 1623.

J. G. BOGARD ET AL., Plaintiffs in Error,
vs.
F. H. SWEET ET AL., Defendants in Error.

Appeal to the Supreme Court of the United States from the Supreme Court of the Territory of Oklahoma.

b UNITED STATES OF AMERICA, *ss:*

The President of the United States to F. H. Sweet, J. L. Sweet, Leona S. Herd, Lucy S. Wilson, Albert Orlando Sweet, Myra E. Sweet, Joseph L. Sweet, Lucy Sweet, Emory Sweet, and A. W. Putnam, as Guardian of Albert Orlando Sweet, Myra E. Sweet, Joseph L. Sweet, Lucy Sweet, and Emory Sweet, defendants in error, and Garrett & Garrett and C. M. Thacker, their attorneys, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, at the City of Washington, within thirty days from the date of this writ, pursuant to the appeal duly allowed and filed in the Clerk's office of the Supreme Court of the Territory of Oklahoma, in a cause wherein J. G. Bogard, J. H. Simpson, H. Y. Hoover, L. J. Edwards, G. S. Huling, S. C. VanLeer, J. A. Powers, M. C. Logan, *pro se* and as the mother and next friend of Addie V. Logan, and James W. Logan, minor heirs of J. W. Logan, deceased, Belle Pendergraft, *pro se* and as mother and next friend of Claud D. Pendergraft, Conway Pendergraft, Myrtle E. Pendergraft, Lillie V. Pendergraft, Isom P. Pendergraft and William Pendergraft, minor heirs of I. L. Pendergraft, deceased, are plaintiffs in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, this 25th day of October, A. D., 1906.

[Seal Supreme Court, Territory of Oklahoma.]

B. F. BURWELL.
Associate Justice of the Supreme Court of the Territory of Oklahoma.

Attest:
BENJ. F. HEGLER, *Clerk.*

c Service of the within and foregoing citation is hereby acknowledged by the delivery to us of a true and complete copy thereof this 3rd day of November, A. D., 1906.

GARRETT & GARRETT,
CHAS. M. THACKER,
Attorneys for Defendants in Error.

[Endorsed:] No. 1623. J. G. Bogard *et al.*, plaintiffs in error, *vs.* F. H. Sweet *et al.*, defendants in error. Citation and proof service thereof. Filed Nov. 6, 1906. Benj. F. Hegler, Clerk Supreme Court.

1 In the Supreme Court of the Territory of Oklahoma.

No. 1623.

J. G. BOGARD, J. H. SIMPSON, H. Y. HOOVER, L. J. EDWARDS, G. S. HULING, S. C. VANLEER, J. A. POWERS, M. C. LOGAN, *pro se* and as the Mother and Next Friend of Addie V. Logan and James W. Logan, Minor Heirs of J. W. Logan, Deceased; BELLE PENDERGRAFT, *pro se* and as Mother and Next Friend of Claud D. Pendergraft, Conway Pendergraft, Myrtle E. Pendergraft, Lillie V. Pendergraft, Isom P. Pendergraft, and William Pendergraft, Deceased, Plaintiffs in Error,

vs.

F. H. SWEET, J. L. SWEET, LEONA S. HERD, LUCY S. WILSON, ALBERT ORLANDO SWEET, MYRA E. SWEET, JOSEPH L. SWEET, LUCY SWEET, EMORY SWEET, and A. W. PUTNAM, as Guardian of Albert Orlando Sweet, Myra E. Sweet, Joseph L. Sweet, Lucy Sweet, and Emory Sweet, Defendants in Error.

Petition for Allowance of Appeal to the Supreme Court of the United States.

The above named plaintiffs in error, conceiving themselves aggrieved by the judgment and decrees made by the said Supreme Court of the Territory of Oklahoma, and entered on the 6th day of September, 1906, in the above entitled cause, do hereby appeal from the said judgment and decree to the Supreme Court of the United States, for the reasons specified in the assignment of errors which is hereto attached and filed herewith, and pray that this appeal may be allowed, and that a transcript of the record, papers and proceedings upon which said judgment and decree were made, duly authenticated, may be sent to the said Supreme Court of the United States.

JOHN W. SHARTEL,
J. R. KEATON,
FRANK WELLS,
Attorneys for Pl'ffs in Error.

Filed Oct. 20, 1906.

BENJ. F. HEGLER,
Clerk Supreme Court.

2 In the Supreme Court of the Territory of Oklahoma.

No. 1623.

J. G. BOGARD ET AL., Plaintiffs in Error,
vs.
F. H. SWEET ET AL., Defendants in Error.

Assignment of Errors on Appeal.

Comes now the plaintiffs in error in the above entitled action and file the following assignment of errors in connection with, and in support of, their petition for allowance of appeal and upon which they will rely:

1st. The Supreme Court of Oklahoma erred in deciding that: "Where S purchases from the State of Texas land in what is now Greer County, Oklahoma, and plats the same as a portion of the townsite of Mangum, and thereafter enters into a contract with certain persons for the establishment of a newspaper, wherein it is agreed that such persons shall form a corporation, and run said newspaper and sell S's townsite property, and collect certain notes held by him, paying two-thirds of all amounts received to said S, themselves retaining one-third; and where S, in pursuance of said contract, as a matter of convenience, executes and delivers to such persons a warranty deed to said land, and such corporation is never formed, but the project is abandoned, and the deed, together with the notes returned to S, *Held*, That S in such case is entitled to a decree cancelling such contract, and the deed executed thereunder."

2nd. The said Court erred in holding and deciding in effect that the return of a warranty deed, duly executed, delivered and recorded, by one of the grantees therein to the grantor upon an understanding between such grantee and said grantor that the principal object for which the deed was executed had failed, re-invested the grantor with the equitable title to the land described in such deed.

3 3rd. The said court erred in holding and deciding in effect that the grantees in said deed were merely the agents of the grantor for the purpose of selling the real property therein described and without any beneficial interest in the title thereto.

4th. The said court erred in not deciding the principal propositions urged by counsel for plaintiffs in eror as grounds for reversal of the judgment of the trial court and in holding that said questions so urged "have no application to the facts in the case, or to any rule that should govern the court in its decision."

5th. The said court erred in not holding and deciding that the grantor in a deed is estopped to deny the consideration expressed therein, for the purpose of defeating the conveyance.

6th. The said Court erred in not reversing the judgment of the

trial court with directions to enter judgment in favor of plaintiffs in error.

JOHN W. SHARTEL,
J. R. KEATON,
FRANK WELLS,
Attorneys for Plaintiffs in Error.

Filed Oct. 20, 1906.

BENJ. F. HEGLER,
Clerk Supreme Court.

Endorsed on the back as follows: No. 1623. In the Supreme Court of the Territory of Okla. J. G. Bogard, *et al.*, Plaintiffs in error *vs.* F. H. Sweet, *et al.*, Defendants in Error. Petition for allowance of appeal to the Supreme Court of the United States and Assignment of error. Filed Oct. 20, 1906. Benj. F. Hegler, Clerk Supreme Court. Shartel, Keaton & Wells, Oklahoma City, Okla. Attorney for Plaintiffs in Error.

4 In the Supreme Court of the Territory of Oklahoma.

#1623.

J. G. BOGARD ET AL., Plaintiffs in Error,
vs.
F. H. SWEET ET AL., Defendants in Error.

Affidavit Showing Value of Real Property in Controversy.

Comes now J. A. Powers and L. J. Edwards of lawful age, and being first duly sworn depose and say, that they are two of the plaintiffs in error in the above entitled action and that they are well acquainted with the real property in controversy therein, and that the value of same exceeds the sum of Five Thousand Dollars, and is about the sum of Twenty Five Thousand Dollars.

J. A. POWERS.
L. J. EDWARDS.

Subscribed and sworn to before me this 4th day of October, 1906.

PERCY POWERS,
[SEAL.] *Notary Public.*

My commission expires April 1st., 1908.

Endorsed on the back as follows: Filed Oct. 20, 1906. Benj. F. Hegler, Clerk Supreme Court.

5 In the Supreme Court of the Territory of Oklahoma.

No. 1623.

J. G. BOGARD ET AL., Plaintiffs in Error,
vs.
F. H. SWEET ET AL., Defendants in Error.

Order Allowing Appeal.

Now, on this 25th day of October, 1906, it is hereby ordered that the appeal prayed for by plaintiffs in error in the above entitled cause to the Supreme Court of the United States be, and the same is hereby allowed as prayed.

B. F. BURWELL,
Associate Justice of the Supreme Court of the Territory of Oklahoma.

Attest:
BENJ. F. HEGLER, *Clerk.*

[SEAL.]

Endorsed on the back as follows: No. 1623. J. G. Bogard, *et al,* Plaintiffs in error *vs.* F. H. Sweet, *et al.,* Defendants in Error. Order allowing appeal. Filed Oct. 27, 1906, Benj. F. Hegler, Clerk Supreme Court.

6 In the Supreme Court of the Territory of Oklahoma.

No. 1623.

J. G. BOGARD ET AL., Plaintiffs in Error,
vs.
F. H. SWEET ET AL., Defendants in Error.

Bond on Appeal for Cost Without Supersedeas.

Know all men by these presents: That J. G. Bogard, *et al.,* plaintiffs in error in the above entitled cause, as principals, and F. Armbruster and —— as sureties, are hereby held and firmly bound unto F. H. Sweet, J. L. Sweet, Leona S. Herd, Lucy S. Wilson, Albert Orlando Sweet, Myra E. Sweet, Joseph L. Sweet, Lucy Sweet, Emory Sweet, and A. W. Putnam as guardian of Albert Orlando Sweet, Myra E. Sweet, Joseph L. Sweet, Lucy Sweet, and Emory Sweet, defendants in error in said cause, in the sum of One Hundred & no/100 Dollars for the payment of which well and truly to be made the said principals and sureties hereby bind themselves, their heirs, executors and assigns.

The conditions of the above obligation are such that whereas, said plaintiffs in error intend to appeal from the judgment and decree

rendered in said cause by the Supreme Court of the Territory of Oklahoma to the Supreme Court of the United States,

Now, therefore, if the said plaintiffs in error, as such appellants, shall prosecute their appeal to effect and answer all costs that may be adjudged against them then, this obligation shall be null and void, otherwise to remain in full force and effect.

J. A. POWERS, *Principals.*

F. ARMBRUSTER, *Sureties.*

7 TERRITORY OF OKLAHOMA, *County of Greer, ss:*

Comes now F. Armbruster, of lawful age, who being first duly sworn, says, that he is one of the sureties on the above and foregoing appeal bond and is worth the sum of Two Hundred Dollars over and above all his debts, liabilities and legal exemptions.

F. ARMBRUSTER.

Subscribed and sworn to before me this 23" day of October, 1906.

PERCY POWERS,
Notary Public.

[SEAL.]

My commission expires April 1st 1908.

This is to certify that I, the undersigned Associate Justice of the Supreme Court of the Territory of Oklahoma, do hereby, on this 25th day of October, 1906 (being the same date on which the citation on appeal in the said above entitled cause is signed) approve the above and foregoing cost bond on said appeal.

B. F. BURWELL,
Associate Justice of the Supreme Court of the Territory of Oklahoma.

Endorsed on the back as follows: No. 1623. J. G. Bogard, *et al.*, Plaintiff in error, *vs.* F. H. Sweet, *et al.*, Defendants in error. Supersedeas Bond. Filed Oct. 27, 1906, Benj. F. Hegler, Clerk Supreme Court.

8 In the Supreme Court of the Territory of Oklahoma.

No. 1623.

J. G. BOGARD, J. H. SIMPSON, H. Y. HOOVER, L. J. EDWARDS, G. S. HULING, S. C. VANLEER, J. A. POWERS, M. C. LOGAN, *pro se* and as the Mother and Next Friend of Addie V. Logan and James W. Logan, Minor Heirs of J. W. Logan, Deceased; BELLE PENDERGRAFT, *pro se*, and as Mother and Next Friend of Claud D. Pendergraft, Conway Pendergraft, Myrtle E. Pendergraft, Lillie V. Pendergraft, Isom Pendergraft, and William Pendergraft, Minor Heirs of I. L. Pendergraft, Deceased, Plaintiff in Error,

vs.

F. H. SWEET, J. L. SWEET, LEONA S. HERD, LUCY S. WILSON, ALBERT ORLANDO SWEET, MYRA E. SWEET, JOSEPH L. SWEET, LUCY SWEET, EMORY SWEET, and A. W. PUTNAM, as Guardian of Albert Orlando Sweet, Myra E. Sweet, Joseph L. Sweet, Lucy Sweet, and Emory Sweet, Defendants in Error.

Petition in Error.

Comes now the said J. G. Bogard, *et al.*, plaintiffs in error and complain of said defendants in error for that, the said defend-
9 ants in error at the August 1903 Term of the District Court of Greer County, Territory of Oklahoma recovered a judgment, by the consideration of said court, against the said plaintiffs in error, in a certain action then pending in said court, wherein the said plaintiffs in error were plaintiffs and the said defendants in error were defendants, the original case-made containing a true and complete copy of all the record and proceedings in said cause is hereto attached, made a part hereof and marked "Exhibit A"; and the said plaintiffs in error aver that there is error in said record and proceedings in this, to wit:

First. Said Court erred in overruling the motion of plaintiffs in error for a new trial.

Second. Said court erred in not rendering judgment for the plaintiffs in error on the pleadings and evidence in said cause.

Third. Said court erred in admitting certain incompetent, irrelevant and immaterial evidence on the part of defendants in error and over the objection of plaintiff in error.

Fourth. Said Court erred in refusing and ruling out certain competent and legal evidence offered on behalf of plaintiffs in error.

Wherefore the plaintiffs in error pray that said judgment so rendered may be reversed, set aside and held for naught, and that a new trial of said cause be directed and the plaintiffs in error restored to all rights which they have lost by reason of the rendition of

said judgment, and for such further relief as to the court may seem just.

J. G. BOGARD ET AL.,
Plaintiffs in Error,
By SHARTEL, KEATON & WELLS AND
J. A. POWERS, *Their Attorneys.*

Filed Oct. 15, 1904.

BENJ. F. HEGLER,
Clerk Supreme Court,
By JESSIE PARDOE, *Deputy.*

10 TERRITORY OF OKLAHOMA, *Greer County, ss:*

In the District Court in and for Said County and Territory.

H. C. SWEET, Plaintiff,
vs.
J. G. BOGARD, H. M. FERGUSON, R. C. HANNAH, S. C. VAN LEER, E. R. FLETCHER, M. E. CLARK, J. H. SIMPSON, S. H. TITTLE, T. B. DUKE, L. J. EDWARDS, H. Y. HOOVER, G. W. LYNCH, G. H. EUBANKS, G. L. ALLEN, J. A. POWERS, E. A. WINKLER, O. P. ELLIOTT, G. S. HULING, BELL PENDERGRAFT, CLAUDE PENDERGRAFT, CONWAY PENDERGRAFT, MYRTLE E. PENDERGRAFT, LILLIE V. PENDERGRAFT, ISAM P. PENDERGRAFT, WILLIAM PENDERGRAFT, W. L. PENDERGRAFT, N. C. LOGAN, ADDIE V. LOGAN, JAMES WELSH LOGAN, J. W. LOGAN, ALICE EDWARDS, MARGIE EDWARDS, ALCIE EDWARDS, Defendants.

Case-made.

Be it remembered that heretofore, to wit on the — day of —— 190– the said plaintiff, H. C. Sweet, commenced his action against said defendants by filing in the District Court of Greer County his petition, which said petition is in words and figures, following to wit:

11 Substitute Copy.

In the District Court of Greer County, Oklahoma Territory.

H. C. SWEET, Plaintiff,

vs.

J. G. BOGARD, H. M. FERGUSON, R. C. HANNAH, S. C. VAN LEER, E. R. FLETCHER, M. E. CLARK, J. H. SIMPSON, S. H. TITTLE, T. B. DUKE, L. J. EDWARDS, H. Y. HOOVER, G. W. LYNCH, G. H. EUBANKS, G. L. ALLEN, J. A. POWERS, E. A. WINKLER, O. P. ELLIOTT, G. S. HULING, BELL PENDERGRAFT, CLAUDE PENDERGRAFT, CONWAY PENDERGRAFT, MYRTLE E. PENDERGRAFT, LILLIE V. PENDERGRAFT, ISAM P. PENDERGRAFT, WILLIAM PENDERGRAFT, W. L. PENDERGRAFT, N. C. LOGAN, ADDIE V. LOGAN, JAMES WELSH LOGAN, J. W. LOGAN, ALICE EDWARDS, MARGIE EDWARDS, ALCIE EDWARDS, Defendants.

Petition.

To the Honorable B. F. Burwell, judge of said court:

Comes now the plaintiff in the above entitled cause and, for his cause of action against the defendants therein, alleges that on or about the 10 day of December, 1890, the Mangum Star Printing and Publishing Association was a partnership located and doing business in the town of Mangum, Greer County, Oklahoma, and composed of the following named persons, to wit: J. G. Bogard, H. M. Ferguson, R. C. Hannah, C. S. Van Leer, E. R. Fletcher, M. E. Clark, J. H. Simpson, S. H. Tittle, F. B. Duke, L. J. Edwards, H. Y. Hoover, G. W. Lynch, G. H. Eubanks, G. L. Allen, J. A. Powers, E. A. Winkler, O. P. Elliott, G. S. Huling, I. L. Pendergraft, J. W. Logan, C. J. Edwards and H. C. Sweet.

That since said time the said I. L. Pendergraft has deceased, leaving surviving him his widow, Bell Pendergraft, and his six minor children, Claude D. Pendergraft, Conway Pendergraft,
12 Myrtle E. Pendergraft, Lillie V. Pendergraft, Isam P. Pendergraft and William Pendergraft, and as sole executor and devisee of all his estate, both real and personal, W. L. Pendergraft and also since said time the said J. W. Logan has deceased leaving surviving him his widow, M. C. Logan and two minor children, Addie V. Logan and James Welch Logan, and since that time also the said C. J. Edwards has deceased, leaving surviving him his widow, Alice Edwards, and two minor children, Margie Edwards and Alice Edwards, and this plaintiff therefore, make defendants in this case the following parties, to wit: J. G. Bogard, W. M. Ferguson, R. C. Hannah, S. C. Van Leer, E. R. Fletcher, M. E. Clark, J. H. Simpson, S. H. Tittle, F. B. Duke, L. J. Edwards, H. Y. Hoover, G. W. Lynch, G. H. Eubanks, G. L. Allen, J. A. Powers, E. A. Winkler, O. P. Elliott, G. S. Huling, Bell Pendergraft, Widow of I. L. Pendergraft, deceased, Claude D. Pendergraft, and Conway

Pendergraft, Myrtle E. Pendergraft, Lilly V. Pendergraft, Isam P. Pendergraft, and William Pendergraft, the six minor heirs of the said I. L. Pendergraft, deceased, and W. L. Pendergraft, sole executor and devisee of the said I. L. Pendergraft, deceased, M. C. Logan, widow of J. W. Logan, deceased, Addie V. Logan and James Welch Logan, minor heirs of the said J. W. Logan, deceased, Alice Edwards, widow of C. J. Edwards, deceased, Margie Edwards and Alcie Edwards, minor heirs of the said C. J. Edwards, deceased, partners as the Mangum Star Printing and Publishing Association and the survivors and representatives thereof.

Plaintiff alleges that the said H. C. Sweet, hereinbefore named as one of the members of the said Mangum Star Printing and Publishing Association, is the same person as this plaintiff.

And plaintiff further alleges that the said deceased parties, I. L. Pendergraft, C. J. Edwards, and J. W. Logan, left no other heirs and no other representatives surviving them, than the said parties named herein as their heirs, minor children and representa-
13 tives, and as defendants.

And the plaintiff also alleges that each of the aforesaid minor children of the said I. L. Pendergraft, C. J. Edwards and J. W. Logan, deceased, is under thirteen years of age.

And plaintiff further alleges that on the 13th day of October 1898, he received a patent from the Government of the United States conveying to him the following described tracts of land, situated in Greer County, Oklahoma, towit: The south east quarter of the south east quarter of section twenty seven, the south west quarter of the *of the* south west quarter of section twenty six, the north east quarter of the north east quarter of section thirty four, and the north west quarter of the north west quarter of section thirty five, all in township 5, north, range twenty two west of the Indian Meridian, and that he is now the owner thereof in fee simple, excepting certain parts and parcels of the said land which he has heretofore but subsequent to the said date of the said patent, conveyed to various and sundry persons by his good and sufficient warranty deed.

That on or about the said — day of December, 1890, this plaintiff prepared and at some time not later than about the 10th day of February next thereafter made executed and delivered to the aforesaid members of the aforesaid Mangum Star Printing and Publishing Association his certain deed and instrument in writing, a true copy of which is hereto attached and marked "Exhibit A" and hereby made a part of this petition.

That the land described in said deed, Exhibit A, together with the excepted lots and all excepted portion therein named, is the same land as that described herein above, as contained in the patent of the Government of the United States to this plaintiff, dated October, 13, 1898, but covers some additional land in excess of and not included in said patent.

That Anna Sweet, wife of this plaintiff, never had any
14 interest in said land or in said conveyance except as such wife and merely joined in the execution of said deed because of her said relationship to said plaintiff.

That the said deed of this plaintiff was made by him to the said parties named without any consideration whatever being paid by the said parties to this plaintiff and was made solely for the purpose of inducing, causing and impowering said parties to sell and convey said land in accordance with a certain contract in writing made, executed and delivered by said parties and one E. R. Claunch to this plaintiff at the same time that he made, executed and delivered to them the aforesaid deed and to collect certain notes enumerated and described in said contract in writing, and said parties and the said E. R. Claunch, were required by the said contract to use reasonable diligence to sell said land and collect said notes, and also to pay over to plaintiff and his said wife two-thirds of the gross receipts in cash collected and received on sales of said land and on payments of said note, the intent being to allow the said parties and the said E. R. Claunch, to retain the remaining one third of such receipts in cash as compensation for their services in procuring purchasers of said land in collecting said notes, but the said parties and the said E. R. Claunch had no interest or right in or to said land or in or to said notes other than as agents to sell said land and collect said notes according to the terms of said contract in writing.

That a true copy of said contract in writing is hereto attached marked "Exhibit B" and thereby made a part of this petition.

The said deed and contract were not fully executed and delivered on or about December 10, 1890, when they were prepared but were signed acknowledged and delivered at different times thereafter not later than on or about February 10, 1891, and during said time of the making, executing and delivering said deed and contract in writing some changes were made or intended to have been made in the parties thereto, but through inadvertence and mistake, were not fully made in this to wit: E. R. Claunch signed said contract, but his name was not inserted in said deed, while the names of G. S. Huling, E. A. Winkler, and J. A. Powers were canceled on said contract and O. P. Elliott omitted to sign the same with the intent that the last four names should also be then and there stricken from said deed but through inadvertence and mistake, as plaintiff believe-, were stricken only from the first enumeration of the parties mentioned in said deed.

That the said parties hereinbefore named as members of the Mangum Star Printing and Publishing Association, and the said E. R. Claunch, wholly failed and refused to perform each and every portion of their aforesaid promises and undertakings in regard to said land and said notes and sometime thereafter, in the Spring or summer of 1891, without having sold or having attempted to sell any of said land and without having collected or attempted to collect any money on said notes, returned and surrendered said notes to plaintiff, and as plaintiff believes, said deed; but plaintiff, although he has made diligent search and inquiry for the same has been and is unable to find or to learn of the whereabouts of the same, the said deed, and he believes that the same was been destroyed in his possession. That at the time said notes were returned and surrendered to plaintiff, and as he believes, said deed also, it was understood by and between

all of the parties to said deed and to said contract in writing that said deed and said contract was then and there and should thereafter be of no force or effect, and that the transaction of making and delivering said deed and said contract, as aforesaid, was and should be rescinded and vacated.

That until July 1900, plaintiff did not know that said deed had been recorded.

16 That after the execution of said deed, it was on the 24th day of June, 1891, filed in the office of the County Clerk of Greer County, Texas, which then had jurisdiction over said Territory of Greer County, Oklahoma, and exercised official authority therein and said office of County Clerk was then the proper office in which to file said instrument to give record notice to the world of its existence.

That the grantees in said instrument, however, never carried out any of the uses and purposes of said grant and never did any of the things which it was contemplated when said deed was executed they would do or which they agreed to do in the consideration of the execution of said deed and said grant, and said grant never was accepted and the benefits thereof taken or the obligations performed on the part of the said grantees and the uses and purposes of said deed and grant have long since wholly ceased in operation and effect.

Second Cause of Action.

And for a further and second cause of action this plaintiff further alleges that at the time said deed was executed, one A. S. Mangum had a patent from the State of Texas to said land, and the plaintiff held a deed from his heirs to a certain interest therein and as between the parties to said last named deed was to be the owner of said land described in "Exhibit A" and said land was claimed, with all of Greer County, as a part of the State of Texas and as constituting Greer County in the State of Texas; that subsequently, however, and by a decision of the Supreme Court of the United States on March 16, 1896, under the authority of the laws of the United States as contained in section 25 of the Organic Act of the Territory of Oklahoma, decided that said Greer County, Texas, and Oklahoma, never did belong to the State of Texas, and was and has been at all times herein stated, a part of the domain and Territory of the United States of America, and therefore, on the 18 day of January, 1897, the

17 Congress of the United States enacted a law, duly approved by the President, whereby grants and titles of said lands in Greer County, Oklahoma, including the land in controversy could be obtained and procured only under the homestead law of the United States, as modified by said Act of Congress of January 18, 1897, pertaining to the acquisition of title to land in Greer County, Oklahoma, and was under the "Additional land" clause of said latter Act of Congress of — United States that the plaintiff has acquired his title to said land and by reason of the premises, the plaintiff alleges that said deed. "Exhibit A" to said various grantees was without consideration, and has never been accepted or used in accordance with the intention and agreements of the parties and has never been given any effect

whatever, and furthermore, that under the laws of this land, said land and estate being at the time of said deed a part of the domain of the United States, this plaintiff could grant to said grantee, and they could acquire, no right whatever under the said grant, and the same cannot operate to divest the plaintiff of his subsequently acquired title.

That said deed "Exhibit A" under the law, having been made prior to the time that plaintiff was entitled to any patent from the Government of the United States to said land, the same cannot operate to divest plaintiff of his right to acquire title to the land in controversy through and from the Government of the United States.

And plaintiff further alleges that the said patent to said land from the State of Texas, to the said A. S. Mangum, prior to the making of said deed, "Exhibit A" by this plaintiff was and always has been wholly void and of no effect whatever, and similar patents executed by the State of Texas have been by the highest courts of said state *been* held void and inoperative to convey said lands from the state of Texas, and the heirs of said A. S. Mangum surrendered and permitted said patent to be cancelled by the state of Texas.

The plaintiff further alleges that said deed "Exhibit A"
18 being on record now in the office of the Register of Deeds of Greer County, Oklahoma Territory, operates to cloud the title of this plaintiff to said quarter section of land, and to the sundry and various parts thereof, which plaintiff yet owns and controls and possesses in fee simple, and also operates to cloud the title of the remaining portions of said quarter section of land which this plaintiff has conveyed by warranty deed to various and sundry persons, who on account of said cloud and on account of the covenants in plaintiff's said deeds to them, may each bring separate sections against plaintiff to quiet their title to the separate and several portions of said land owned by them, and thereby this plaintiff be involved in a multiplicity of suits which will entail upon him expensive and noxious litigation and great cost.

The plaintiff has no other adequate and complete remedy at law to obtain relief hereby sought.

Wherefore plaintiff prays judgment of the court that said defendants and each and all of them be required to appear and answer in this cause and to set up their interest; if any they have in this action and the property therein involved, and that judgment be rendered for the plaintiff, granting to him the relief he is entitled to under the facts herein set forth and that the said deed, "Exhibit A" be vacated and cancelled and held for naught and the cloud thereby made upon the title to the tracts of land herein set forth be removed, and plaintiff be held to be vested with the clear title to said tracts of land on October 13, 1898, by his patent from the United States to said land, free and clear of all charges or claims of any kinds or nature whatever by virtue of said deed "Exhibit A" herein set out, and that the plaintiff have and recover all further legal and equitable relief to which he may show himself entitled and all costs of this action.

GARRETT & THACKER,
DALE & BIERER,
Attorneys for Plaintiff.

19 TERRITORY OF OKLAHOMA, *County of Greer:*

Before me the undersigned authority on this 2nd day of August 1900 personally appeared Chas. M. Thacker, who being by me first duly sworn says on his oath that he is one of the above named attorneys for plaintiff in the above action; that he has read the above and foregoing petition of the plaintiff, H. C. Sweet, and knows the contents thereof and that he believes the matters and things therein stated are true. That the said H. C. Sweet is absent from the Territory of Oklahoma and, therefore, affiant makes this affidavit in behalf of the said H. C. Sweet.

CHAS. M. THACKER.

Subscribed and sworn to before me this the 2nd day of August, 1902.

B. D. SHEAR, *Clerk.*

[SEAL.] By O. P. ELLIOTT, *Dep.*

20 "EXHIBIT A."

THE STATE OF TEXAS, *County of Greer:*

Know all men by these presents that we, H. C. Sweet, Anna Sweet, wife of said H. C. Sweet, of the County of Greer and the State aforesaid, for and in consideration of the sum of Ten dollars to us paid in hand by the Mangum Star Printing and Publishing Association composed of the following persons, J. G. Bogard, H. M. Ferguson, R. C. Hannah, S. C. Van Leer, E. R. Fletcher, I. L. Pendergraft, M. E. Clark, J. H. Simpson, S. H. Tittle, F. B. Duke & Co., L. J. Edwards, J. W. Logan, H. Y. Hoover, G. W. Lynch, G. H. Eubank, H. C. Sweet, *nad* G. L. Allen, have granted sold and conveyed and by these presents do grant, sell and convey unto the said J. A. Powers, J. G. Bogard, H. M. Ferguson, R. C. Hannah, S. C. Van Leer, E. A. Winkler, O. P. Elliott, E. R. Fletcher, I. L. Pendergraft, M. E. Clark, J. H. Simpson, G. S. Huling, S. H. Tittle, F. B. Duke & Co., L. J. Edwards, J. W. Logan, H. Y. Hoover, G. W. Lynch, G. H. Eubank, H. C. Sweet and G. L. Allen, of the County of Greer and State of Texas, all that certain tract or parcel of land situated in Greer County, Texas, described as follows, to wit: All of the town lots in the city of Mangum, Greer Co, Texas, as appears upon corrected plat of said town filed and recorded in the county clerk's office of Greer County, Texas, in deed recorded of said county in volume 2 page 35 and being the north half of 320 acres of land patented to A. S. Mangum Dec. 10th, 1885, said patent recorded in Co. Clerk's office in said county in deed record Vol. 2, page 14, to which record reference is here made for more complete description of this land. The following lots as shown by said mentioned plat are not sold, viz.:

Lots No. 5, 8 and 3 in block 2.

Lots No. 3 and 1 in block 25.

21 Lots. No. 1, 2, 3, 5, 6 and 4 in block 13.

Lots No. 1, 2, 3, 4, 5, and 6 in block No. 11.

Lots 6, 5, 4, 3, and 2 in block 19.

Lots No. 5, 7, in block No. 3.
Lots No. 2, 6, 3, 4, 5, in block No. 15.
Lots No. 1, 2, 3, 4, 5, & 6 in block No. 10.
Lots No. 1, 2, 3, 4, 5, and 6 in block No. 9.
Lots No. 1, 2, 3, 4, 5, and 6 in block No. 12.
Lots No. 1, 2, and 5 in block No. 8.
Lots No. 6, 1, 5 and 4 in block 16.
Lots No. 6, 3, 2, 5 and 4 in block 18.
Lot No. 1, in block No. 39.
Lot No. 2, in block No. 20.
Lots No. 2 and 3 in block No. 33.
Lots No. 1 and 2 in block No. 24.
Lots No. 1 in Block No. 14.
Lot No. 1 in block No. 26.
Lots No. 1, 2, 3, and 4 in block No. 28.
Lots 3 and 4 in block No. 6.
Lot No. 1 in block No. 32.
Lot No. 1 in block No. 29.
Lot No. 1 and 2 in block No. 17.
Lots No. 2, 3, and 4 in block No. 26.
Lots No 1 " " " 15 and all of block No. 1.

Lots 2, 3, and 4 in block No. 26 and lot No. 1 in block 15 are absolutely reserved to ourselves. The remainder of said excepted lots above mentioned have heretofore been sold by us and on a part of said lots we now hold vendor's lien notes for the purchase of said lots which notes and vendor's lien retained thereon and sold and conveyed to the grantees herein and said grantees are sub-
22 rogated to all rights, title and interest held by us in and to said lots and notes. To have and to hold the above described premises together with all and singular the rights and appurtenances thereto in any wise belonging unto the said J. A. Powers, J. G. Bogard, H. M. Ferguson, R. C. Hannah, S. C. Van Leer, E. A. Winkler, O. P. Elliott, E. R. Fletcher, I. L. Pendergraft, M. E. Clark, J. H. Simpson, G. S. Huling, S. H. Tittle, F. B. Duke & Co., L. J. Edwards, J. W. Logan, H. Y Hoover, G. W. Lynch, G. H. Eubanks, H. C. Sweet, and G. L. Allen, and their heirs and assigns forever.

And we do hereby ourselves and our heirs, executors and administrators to warrant and forever defend all and singular the said premises unto the said J. G. Bogard, H. M. Ferguson, R. C. Hannah, S. C. Van Leer, E. R. Fletcher, I. L. Pendergraft, M. E. Clark, J.H. Simpson, S. H. Tittle, G. W. Lynch, G. H. Eubank, H. C. Sweet and G. L. Allen, heirs and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof.

Witness our hands at Mangum, Texas, this — day of —— A. D. 18—.

H. C. SWEET.
ANNA SWEET.

THE STATE OF TEXAS, *Greer County:*

Before me J. W. Logan, County Clerk in and for Greer County, Texas, on this day personally appeared H. C. Sweet and Anna

Sweet wife of H. C. Sweet, both known to me to be the persons whose name is subscribed to the foregoing instrument and acknowledge to me that they executed the *the* same for the purposes and consideration therein expressed. And the said Anna Sweet wife of said H. C. Sweet, having been examined by me privately and apart from her husband and having the same fully explained to her she the
23 said Anna Sweet acknowledged such instrument to be her act and deed and she declared she has willingly signed the same for the purposes and consideration therein expressed and that she did not wish to retract it.

Given under my hand and seal of office this 10th day of Feb. 1891.

J. W. LOGAN,
County Clerk, Greer County, Texas.

Filed June 24, 1891 at 4 o'clock P. M. and recorded same day and hour.

J. W. LOGAN,
County Clerk, Greer County, Texas.
By LOGAN TEAGARDEN, *Deputy.*

24 EXHIBIT B.

STATE OF TEXAS, *Greer County:*

Know all men by these presents that whereas on the 10th day of Dec. 1890, H. C. Sweet and his wife, Anna Sweet, did execute and deliver their warranty deed to us for the town lots in said deed described situated in the town of Mangum, Greer County, Texas, and accurately described in said deed which deed is recorded in Vol. 2 p. 308-9 Deed Record of Greer County, Texas, and to which reference is hereby made for a more complete description of said town lots now theretofore in consideration of said conveyance of said town lots by said H. C. Sweet and wife, Anna Sweet and other valuable considerations to us paid, we hereby bind ourselves the grantees in said deed our heirs and assigns and legal representatives to use reasonable diligence to sell said lots and to collect payments therefor and to pay over to H. C. Sweet and wife Anna Sweet two thirds (2-3) of the gross receipts in cash received and collected on all sales of said lots as soon as collected and whereas the said H. C. Sweet has transferred to us the following described notes to wit:

Harwood & Mathis to H. C. Sweet due Aug. 13th 1888, dated Mangum Texas, Aug. 13, 1887, amount $28.00 W. H. Cannon to H. C. Sweet, dated Mangum Tex. July 26, 1887, due July 28, 1888, Jas. S. Ellison to H. C. Sweet, Amt. $40, dated Mangum, Texas, July 23rd, 1887, due July 23rd, 1888, Henry Hoover, to H. C. Sweet, Amt. $30.00 date October 31st, 1887, due Oct. 31st, 1888, N. B. Claunch to H. C. Sweet, Amt. $40.00 date Mangum, Texas, Oct. 10, 1887 due Oct. 10, 1888, A. H. Ellison to H. C. Sweet, Amt. $50.00 date Mangum, Texas, July 23rd 1887, due July 23rd 1888, Miss. M. E. Cosper, to H. C. Sweet, Amt. $20.00 date Mangum, Texas,

Aug. 2nd, 1887, due Aug. 2nd, 1888, James Clark to H. C.
25 Sweet, Amt. $125.00 date Mangum, Tex. Sept. 26, 1887, due Sept. 26th, 1888, Jarrett Todd to H. C. Sweet, Amt. $25.00 date Mangum Texas, May 21st, 1887 due May 21st, 1888, W. Ed. Clampitt to H. C. Sweet Amt. $30.00 date Mangum Texas, Oct. 20, 1887, due Oct. 20th, 1888, E. R. Claunch to H. C. Sweet Amt. $25.00 date Oct. 20th, 1887, due Oct. 20th 1888, Tony Keller to H. C. Sweet Amt. $40.00 date Sept. 23rd 1887, due Sept. 23rd, 1888, F. C. Thompson to H. C. Sweet Amt. $56. date Mangum Texas, Aug. 15th, 1887, due Aug. 15th, 1888, A. P. Miller to H. C. Sweet Amt. $20.00 dated Mangum, Texas, July 21st 1888, W. Ed. Clampitt to H. C. Sweet Amt. $20.00 dated Mangum, Tex. July 2nd, 1887, due July 20th, 1888, S. H. Tittle to H. C. Sweet Amt. $40.00 date Aug. 17th, 1887, due Aug. 27th, 1888, W. S. Pierson to H. C. Sweet Amt. $40.00 dated Aug. 6th, 1887, due Aug. 6th, 1888 W. T. Williamson to H. C. Sweet Amt. $40.00 date July 1887 due July 25th 1888, Emma Jones and I. J. Rude to H. C. Sweet, Amt. $40.00 date Mangum Texas, Jan. 1st, 1887, due Jan. 1st, 1888, Mrs. M. E. Cosper to H. C. Sweet Amt. $20.00 date Mangum, Texas, July 29th, 1887, due July 29th 1888, which said notes are secured by vendor's lien on a portion of said reserved lots and said deed.

Now therefore we agree and bind ourselves to use reasonable diligence to secure the payment of said notes and to pay the said H. C. Sweet two thirds of the gross receipts connected on said notes.

Witness our hands this the 10th day of December, 1890. U. G. Bogard, J. W. Logan, Mrs. E. R. Fletcher, S. H. Tittle, S. C. Van Leer, H. M. Ferguson, F. B. Duke & Co. G. W. Lynch, H. Y. Hoover, R. C. Hannah, M. E. Clark, George L. Allen, L. J. Edwards, G. H. Eubank, E. R. Claunch, I. L. Pendergraft, and J. H. Simpson.

26 THE STATE OF TEXAS, *County of Greer:*

Before me, A. J. Berryman, a Notary Public in and for Greer County, Texas, on this day personally appeared J. W. Logan, Mrs. E. R. Fletcher, S. H. Tittle, G. H. Eubank, S. C. Van Leer, H. M. Ferguson, F. B. Duke & Co. G. W. Lynch, H. Y. Hoover, R. C. Hannah, M. E. Clark, L. J. Edwards, E. A. Winkler J. H. Bogard, to me known to be the persons whose names are subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this the 13th day of December, A. D. 1890.

(Signed) A. J. BERRYMAN,
A Notary Public in and for Greer County, Texas.
[NOTARY SEAL.]

27 STATE OF TEXAS, *County of Greer:*

Before me J. W. Logan, Clerk of the County Court in and for said County and state on this day personally appeared I. L. Pendergraft, J. H. Simpson and E. R. Claunch, known to me to be the persons whose names are subscribed to the foregoing instrument, and ac-

knowledged to me that they executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 4 day of Feb'y, 1891.

J. W. LOGAN,

[SEAL.] *County Clerk, Greer County, Texas.*

And thereafter and on the 18th day of August, 1900, the Disclaimers of H. M. Ferguson, O. P. Elliott, F. B. Duke and G. H. Eubank were filed, which said Disclaimers are in words and figures following, to wit:

28 Copy.

In the District Court of Greer County, Oklahoma Territory.

H. C. SWEET
vs.
J. G. BOGARD ET AL.

Comes now H. M. Ferguson, one of the defendants in the above styled and numbered cause, and hereby disclaims any right, title or interest whatever in or to any of the lots, blocks, lands, real estate and premises mentioned and described in plaintiff's petition filed in this cause, and agrees that the deed mentioned in plaintiff's petition may be cancelled.

(Signed) H. M. FERGUSON, *Defendant.*

Filed Aug. 18, 1900.

Copy.

In the District Court of Greer County, Oklahoma Territory.

H. C. SWEET
vs.
J. G. BOGARD ET AL.

Comes now O. P. Elliott one of the defendants in the above styled and numbered cause and hereby disclaims any right, title or interest whatever in or to any of the lots, blocks, lands, real estate and premises mentioned and described in plaintiff's petition filed in this cause, and agrees that the deed mentioned in plaintiff's petition may be cancelled.

(Signed) O. P. ELLIOTT, *Defendant.*

Filed Aug. 18, 1900.

29 Copy.

In the District Court of Greer County, Oklahoma Territory.

H. C. SWEET
vs.
J. G. BOGARD ET AL.

Comes now E. B. Duke, one of the defendants in the above styled and numbered cause and hereby disclaims any right, title or interest whatever in or to any of the lots, blocks, lands, real estate, and premises mentioned and described in plaintiff's petition filed in this cause, and agrees that the deed mentioned in plaintiff's petition may be cancelled.

(Signed) F. B. DUKE, *Defendant.*

(Filed Aug. 18, 1900.)

Copy.

In the District Court of Greer County, Oklahoma Territory.

H. C. SWEET
vs.
J. G. BOGARD ET AL.

Comes now G. H. Eubank, one of the defendants in the above styled and numbered cause, and hereby disclaims any right, title or interest whatever in or to any of the lots, blocks, lands, real estate and premises mentioned and described in plaintiff's petition filed in this cause, and agrees that the deed mentioned in plaintiff's petition may be cancelled.

(Signed) G. H. EUBANK, *Defendant.*

(Filed Aug. 18, 1900.)

30 And thereafter and on the 21st day of August, 1900, the Disclaimer of R. C. Hannah was filed, which said Disclaimer is in words and figures following to wit:

(Copy.)

In the District Court of Greer County, Oklahoma Territory.

H. C. SWEET
vs.
J. G. BOGARD ET AL.

Comes now R. C. Hannah, one of the defendants in the above styled and numbered cause, and hereby disclaims any right, title or interest whatever in or to any of the lots, blocks, lands, real estate,

and premises mentioned and described in plaintiff's petition filed in this cause, and agrees that the deed mentioned in plaintiff's petition may be cancelled.

(Signed) R. C. HANNAH, *Defendant.*

(Filed Aug. 18, 1900.)

And thereafter and on the 24th day of August, 1900, the Disclaimer of George L. Allen was filed, which said Disclaimer is in words and figures following, to wit:

31 Copy.

In the District Court of Greer County, Oklahoma Territory.

H. C. SWEET
vs.
J. G. BOGARD ET AL.

Comes now George L. Allen one of the defendants in the above styled and numbered cause and hereby disclaims any right, title or interest whatever in or to any of the lots, blocks, lands, real estate and premises mentioned and described in plaintiff's petition filed in this cause, and agrees that the deed mentioned in plaintiff's petition may be cancelled.

(Signed) GEORGE L. ALLEN, *Defendant.*

And thereafter and on the 25th day of August, 1900, the Disclaimer of G. W. Lynch was filed, which said Disclaimer is in words and figures following, to wit:

32 Copy.

In the District Court of Greer County, Oklahoma Territory.

H. C. SWEET
vs.
J. G. BOGARD ET AL.

Comes now G. W. Lynch, one of the defendants in the above styled and numbered cause, and hereby disclaims any right, title or interest whatever in or to any of the lots, blocks, lands, real estate and premises mentioned and described in plaintiff's petition filed in this cause, and agrees that the deed mentioned in plaintiff's petition may be cancelled.

(Signed) G. W. LYNCH, *Defendant.*

And thereafter and on the 1st day of September, 1900 the Disclaimer of S. H. Tittle was filed, which said Disclaimer is in words and figures following, to wit:

33 (Copy.)

In the District Court of Greer County, Oklahoma Territory.

H. C. SWEET
vs.
J. G. BOGARD ET AL.

Comes now S. H. Tittle, one of the defendants in the above styled and numbered cause, and hereby disclaims any right, title or interest whatever in or to any of the lots, blocks, lands, real estate and premises mentioned and described in plaintiff's petition filed in this cause, and agrees that the deed mentioned in plaintiff's petition may be cancelled.

(Signed) H. S. TITTLE, *Defendant.*

(Filed Aug. 18, 1900.)

And thereafter and on the 11th day of September 1900, the court made an order passing said cause.

34 And thereafter and on September 12th, 1900, the court granted leave to withdraw said demurrer and to file a motion in lieu thereof.

And thereafter and on September 13th, 1900, leave was granted the plaintiff to amend his petition by interlineation.

And thereafter and on the 14th day of September, 1900, the Disclaimer of W. L. Pendergraft was filed, which said Disclaimer is in words and figures following to wit:

35 (Copy.)

In the District Court of Greer County, Oklahoma Territory.

H. C. SWEET
vs.
J. G. BOGARD ET AL.

Comes now W. L. Pendergraft, one of the defendants in the above styled and numbered cause, and hereby disclaims any right, title or interest whatever in or to any of the lots, blocks, land, real estate and premises mentioned and described in plaintiff's petition filed in this cause, and agrees that the deed mentioned in plaintiff's petition may be cancelled.

(Signed) W. L. PENDERGRAFT,
Sole Devisee and Legatee of I. L. Pendergraft.

(Filed Aug. 18, 1900.)

And thereafter and on the 14th day of September, 1900, the Disclaimer of M. E. Clark was filed, which said Disclaimer is in words and figures following to wit:

36 (Copy.)

In the District Court of Greer County, Oklahoma Territory.

H. C. SWEET
vs.
J. G. BOGARD ET AL.

Comes now M. E. Clark, one of the defendants in the above styled and numbered cause, and hereby disclaims any right, title or interest whatever in or to any of the lots, blocks, lands, real estate and premises mentioned and described in plaintiff's petition filed in this cause, and agrees that the deed mentioned in plaintiff's petition may be cancelled.

(Signed) M. E. CLARK, *Defendant.*

(Filed Aug. 18, 1900.)

And thereafter and on September 14th, 1900 leave was granted to refile demurrer, which said amended demurrer is in words and figures following, to wit:

37 TERRITORY OF OKLAHOMA, *Greer County, ss:*

In the District Court in and for said County and Territory.

H. C. SWEET ET UX., Plaintiff,
vs.
J. G. BOGARD ET AL., Defendants.

Demurrer.

Come now the defendants, J. G. Bogard, J. H. Simpson, H. Y. Hoover, L. J. Edwards, G. S. Huling, S. C. Van Leer, J. A. Powers, M. C. Logan *pro se* and as the mother and next friend of Addie V. Logan and James W. Logan, minor heirs of J. W. Logan, deceased and Belle Pendergraft, *pro se* and as the mother and next friend of Claud D. Pendergraft, Conway Pendergraft, Myrtle E. Pendergraft, Lillie E. Pendergraft, Isom P. Pendergraft and William Pendergraft, minor heirs of I. L. Pendergraft deceased, and demur to the petition of plaintiffs upon the ground that said petition and each count thereof wholly fails to state facts sufficient to constitute a cause of action against these defendants.

(Signed) J. R. KEATON,
Attorney for said above named Defendants.

38 Thereafter and on May 10th, 1901, was filed a suggestion of the death of H. C. Sweet, together with a motion that the action be revived in the names of J. L. Sweet, Leona S. Herd, Lucy S. Wilson and F. H. Sweet, and A. W. Putnam Guardian of the

estate of Albert Orlando Sweet, Myra E. Sweet, Joseph L. Sweet, Lucy Sweet, and Emory Sweet, minors, and that the suit be revived in those as plaintiffs, which said suggestion and motion are in the words and figures as follows, to wit:

(Copy.)

In the District Court of Greer County, Oklahoma Territory.

H. C. SWEET
vs.
J. G. BOGARD ET AL.

To the Honorable B. F. Burwell, District Judge:

Comes now J. L. Sweet, Leona S. Herd, Lucy S. Wilson and F. H. Sweet, and the following minors by their guardian, A. W. Putnam, namely Albert Orlando Sweet, Myra E. Eweet, Joseph L. Sweet, Lucy Sweet, and Emory Sweet, and respectfully show to the Court that since the filing of this suit, H. C. Sweet, the plaintiff has departed this life and left the aforesaid parties as his sole heirs.

Wherefore they ask that this suit be revived in their name as plaintiffs, and that they be allowed to prosecute the same as such plaintiffs and heirs of H. C. Sweet, deceased.

C. M. THACKER,
Attorney for J. L. Sweet, Leona S. Herd, Lucy S. Wilson, F. H. Sweet, and A. W. Putnam, Guardian of the Estate of Albert Orlando Sweet, Myra E. Sweet, Joseph L. Sweet, Lucy Sweet, and Emory Sweet, Minors.

Filed May 10, 1901.

39 And thereafter and on the 10th day of May 1901, an order reviving the action in the names of J. L. Sweet, *et al.* and passing on the demurrer to petition was filed, which said order is in words and figures following to wit:

H. C. SWEET
vs.
J. G. BOGARD ET AL.

On application ordered that this cause be and it is hereby revived in the name of the legal representatives. And now the Demurrer of defendant to the petition herein coming before the Court, and argument thereof is made for defendant by B. B. Blakeney and J. R. Keaton; and for the plaintiff by Charles M. Thacker, the court being advised, it is ordered that said demurrer be, and it is hereby overruled as to the first count, and sustained as to the second count of said petition, and both parties except thereto.

And thereafter and on the 10th day of May, 1901, the court made an order granting leave to the defendant to answer within ten (10) days.

And thereafter and on the 3rd day of June, 1901, by leave of court the answer of defendants was filed, which said answer is in words and figures following to wit:

40 TERRITORY OF OKLAHOMA, *County of Greer, ss:*

In the District Court.

F. H. SWEET ET AL., Heirs of H. C. Sweet, and ANNA SWEET, Deceased, Plaintiffs,
vs.
J. G. BOGARD ET AL., Defendants.

Answer.

Comes now defendants J. G. Bogard, J. H. Simpson, H. Y. Hoover, L. J. Edwards, G. S. Huling, S. C. Van Leer, J. A. Powers, M. C. Logan, *pro se* and as the mother and next friend of Addie V. Logan and James W. Logan, minor heirs of J. W. Logan, deceased, Belle Pendergraft, *pro se* and as the mother and next friend of Claud D. Pendergraft, Conway Pendergraft, Myrtle E. Pendergraft, Lillie V. Pendergraft, Isom P. Pendergraft, and William Pendergraft, minor heirs of I. L. Pendergraft, deceased, and for answer to first count of plaintiff's petition allege the following:

1. That they admit the execution of the warranty deed by H. C. Sweet and Annie Sweet, his wife, set out in plaintiff's petition as "Exhibit A" and the execution of the written contract therein set out as "Exhibit B" and that said H. C. Sweet received a patent for the tract of tracts of land described in said petition on October 13, 1898, as therein alleged.

2. That they deny each and every other material allegation contained in said first count of the petition of plaintiffs, and specifically deny that said deed from the said H. C. and Annie Sweet so made and executed to them and other defendants named in said petition was without consideration, but, on the contrary, state that same was executed for a good, sufficient and valuable consideration.

41 Wherefore these defendants pray judgment against plaintiffs quieting and confirming their title to the land described in said petition, for costs and all other just and equitable relief.

SHARTEL, KEATON & WELLS,
Attorneys for said Defendants.

And thereafter and on September 10th, 1902, application was filed to restore lost records, which said application is in words and figures following to wit:

42 In the District Court of Greer County, Oklahoma Territory.

HEIRS OF H. C. SWEET
vs.
J. G. BOGARD ET AL.

Application to Restore Lost Records.

To the Honorable Frank E. Gillett, District Judge:

Comes now the plaintiffs and represent to the Court that heretofore on the 8 day of December, 1901, the original petition and answer and demurrers and all the original papers filed in this cause were destroyed by fire. That prior to said destruction by fire, all of the parties defendant, had been duly served with summons in this cause, and had entered their appearance in this cause. Plaintiffs further show that certified copies of said original papers cannot be had. That a substantial copy of the petition and of the answer of the defendants who filed answer and substantial copies of the disclaimers filed by the defendants who filed disclaimers herein, and a substantial copy of the application to revive this suit in the name of the heirs of H. C. Sweet, as plaintiffs, are herewith filed. Plaintiffs say that such loss and destruction of the papers and record in this cause by fire as aforesaid, was without fault or negligence of these plaintiffs, and that the loss or destruction of such record, unless supplied will or may result in damage to these plaintiffs.

Wherefore plaintiffs pray that this application be entered of record, and that the same shall be heard by the Court upon such notice and in the manner prescribed by law, and that upon a hearing hereof the petition, answer, demurrer, disclaimers and application to revive herewith filed, be sustituted in lieu of such original papers in this cause so destroyed by fire as aforesaid for costs and general relief.

C. M. THACKER,
GARRETT & GARRETT,
Attorneys for Plaintiffs.

43 TERRITORY OF OKLAHOMA, *Greer County:*

Before me the undersigned authority on this day appeared personally F. H. Sweet, one of the plaintiffs in the above entitled cause, who being on oath duly sworn deposes and says that the allegations of the foregoing petition are true, and that the copies of the lost papers herewith filed are substantially correct, to the best of his information and belief.

F. H. SWEET.

Sworn to and subscribed before me this 16th day of September, 1902.

N. E. SISSON, *Clerk.*

And thereafter and on September 10th, 1902, leave was given to supply lost papers, which said order is in words and figures following to wit:

And thereafter and on September 12th, 1902, and order was made granting leave to substitute papers by September 15th, 1902.

44 And thereafter and on the 17th day of August, 1903, the same being one of the judicial days of the August 1903 term of said court, said cause came on for hearing and the following proceedings were had and evidence introduced, which said evidence is in words and figures following, to wit:

In the District Court in and for Greer County, Territory of Oklahoma, August Term, 1903.

Before Hon. James K. Beauchamp, Judge.

No. 276.

F. H. SWEET ET AL., Plaintiffs,
vs.
J. G. BOGARD ET AL., Defendants.

Appearances.—Messrs. Garrett & Garrett, for Plaintiffs; Messrs. Keaton & Powers, for Defendants.

Now on the 17th day of August, 1903, this case came on for trial and after the opening statements for the respective parties, the plaintiffs offered in evidence the following testimony:

Thereupon O. P. ELLIOTT, a witness of lawful age, being
45 duly sworn, on behalf of the plaintiffs testified as follows:

Questions propounded by S. B. GARRETT:

Q. State your name and residence and where have you resided since 1890?

Mr. KEATON: We object to the introduction of any testimony under the petition for the reason that it fails to state any cause of action against these defendants.

The COURT: Overruled and exception noted.

A. O. P. Elliott, Greer County, since 1890, part of the time at Mangum.

Q. State whether you were acquainted with H. C. Sweet in his lifetime?

A. Yes sir.

Q. And Anna Sweet?

A. Yes sir.

Q. State whether they are dead or not?

A. Yes sir.

Q. I will ask you to examine the deed, marked Exhibit A attached to the plaintiff's petition and state whether or not you know anything about the execution and delivery of that instrument and whether you are one of the parties to that deed as grantees?

A. I could not say for certain whether my name was included in it or not. I don't remember ever seeing the original of it. I could not say.

Q. This copy includes the name of O. P. Elliott. Is that your name?

A. Yes sir.

Q. Where did you live at the time this deed was executed?

A. What is the date of it?

Q. It is dated December, 1890.

A. I was living in Mangum.

Q. State what was the consideration if anything paid for the execution and delivery of that deed?

46 Mr. KEATON: Objected to as incompetent, irrelevant and immaterial and to the competency of the witness.

The COURT: He has not shown that he knows anything about the consideration. Objection sustained for the present.

Q. Do you know anything about a contract that was made between H. C. Sweet and J. G. Bogard, H. M. Ferguson, yourself and others?

A. I don't remember. I have no knowledge of it. It will state all I know was that I took stock in that Company, in the Mangum Star Printing Company. I don't remember ever seeing the contract.

Q. What was that Mangum Star Printing Co. gotten up for?

A. As I understand it, it was gotten up to aid H. C. Sweet in selling Mangum town lots. That was my understanding.

Q. Did the company ever sell any Mangum town lots for H. C. Sweet?

Mr. KEATON: Objected to as incompetent, irrelevant and immaterial and to the competency of the witness and not being the best evidence.

The COURT: Overruled. Exception noted.

A. None to my knowledge.

Q. State if you know whether any other consideration was paid for the execution of the deed by H. C. Sweet than the contract for the sale of town lots and collection of the notes mentioned in the contract?

Mr. KEATON: Objected to as incompetent, irrelevant and immaterial and to the competency of the witness and the deed itself being the best and only evidence admissible under the issues in this case, as to the consideration.

The COURT: I think I shall have to sustain the objection. He may state the fact.

A. There was no other consideration to my knowledge.

Q. State what the consideration was paid for the execution of the deed?

Mr. KEATON: Objected to as incompetent, irrelevant and
47 immaterial, to the competency of the witness to testify on that point and for the further reason that the deed itself is under the issues in this case the only competent evidence as to the consideration.

The COURT: Objection sustained.

Q. Just state in your own way what you know, if anything about whether this contract was carried out or whether it was abandoned?

Mr. KEATON: Objected to as incompetent, irrelevant and immaterial, to the competency of the witness.

The COURT: Let him state the facts. Exception noted.

A. There was nothing done to my knowledge. I did not do anything myself. Not carried out to my knowledge.

Q. Were any of the lots sold by the grantees mentioned in this deed?

Mr. KEATON: Objected to as incompetent, irrelevant and immaterial and not the best evidence under the issues in this case.

The COURT: Objection overruled. Exception noted.

A. None sold to my knowledge.

Q. State what was done with the notes that were turned over under the contract to the company?

Mr. KEATON: Objected to as incompetent, irrelevant and immaterial and to the competency of the witness.

The COURT: Overruled. Exception noted.

A. Nothing to my knowledge.

Q. Was there ever anything collected by the said Company on the notes? Do you know whether there was?

A. No, I do not.

Q. Who had the collection of the notes, had charge of that part of the business.

A. I don't know for sure unless R. C. Hannah. I don't know myself.

Cross-examination.

By Mr. KEATON:

48 Q. Did you ever see those notes at any time?

A. No stir.

Q. Ever see the deed?

A. Not that I remember of. I took stock——

Q. Is it not a fact that the inducement for you to take stock in this Company was the giving of this deed by Mr. Sweet to the Company and in order to start that paper and hold the county seat here?

A. The inducement, as I understood, was to help the town and help Mr. Sweet sell these town lots.

Q. How much money did you pay for that stock you took in the paper?

A. I think it was $5 a share.

Q. Did you pay $5.

A. If I remember the circumstances, I did not pay the money myself.

Q. Do you know as a matter of fact that by reason of the inducement to the members of the Star Printing Company to start that paper, establish it here and make the fight for the town, there was $750 paid in by the different members or about that in cash and notes?

A. I understood there was about that amount. I do not know.

Q. Really you do not know anything personally about it?

A. No sir, I do not. I took the stock in the paper——

Q. Did you pay for the stock?

A. It was transferred to me. Some body else paid for it.

Q. That is all you know about it.

A. Yes sir.

Q. You do know, Mr. Elliott, that Mr. Sweet went to all of you parties to get you to organize the Company and offered to make this deed for you as part consideration?

A. I do not know whether he went to all.

Q. Do you know he made a public talk or speech?

A. I understood so. I was out of town at that time.

Q. Did he talk to you about it?

49 A. I don't remember that he did. Mr. Powers spoke to me about it.

Q. Powers is one of the parties here?

A. Yes sir.

Q. And you are one of the parties?

A. Yes.

Redirect examination.

By A. R. GARRETT:

Q. You waived all rights you had under this?

Mr. KEATON: Objected to as incompetent, irrelevant and immaterial and to the competency of the witness.

The COURT: Overruled and exception.

A. I never claimed I had any rights.

Q. What became of that Star Publishing Company?

Mr. KEATON: Objected to as incompetent and irrelevant and immaterial.

The COURT: Overruled and exception noted.

A. It was abandoned and dropped. Did not hear of it after that.

Recross-examination.

By Mr. KEATON:

Q. How long did it run?
A. I could not say.

The witness was then excused and the plaintiffs offered in evidence the deposition of G. H. Eubank, which is in words and figures as follows to wit:

My name is G. H. Eubank, I reside in the City of Ennis, Ellis County, Texas, and have resided there since March, 1895. In May 1890, I moved to Mangum, Greer County, (then Texas) now Oklahoma Territory. I resided there continuously from that date until about the 1st of March, 1895, when I moved to Ennis, Texas.

While living at Mangum I was engaged in the practice of law and am now so engaged. The matter involved in this suit, come
50 up in this way, about December 1890, the Mangum Star, a newspaper published at Mangum was sold by the publisher, Dawson, to the parties named in a contract dated Dec. 10th, 1890, executed by H. C. Sweet, and Wife, Annie Sweet, a copy of which is hereto attached marked Exhibit "A" for identification. The parties named in that contract intended to continue the publication of said paper. I was one of the parties mentioned in the contract, and took an active part in continuing the publication of the paper. A proposition was made by H. C. Sweet to the parties therein mentioned in substance as follows: That is the parties who owned the paper would incorporate under the laws of the State of Texas, a company the object of which Company was to publish said newspaper, and also to sell town lots and trade in real property; that the said Sweet would transfer a one third interest in the lots described in said contract, and also turn over to said parties certain vendor's lien notes, which said Sweet held on various lots in the town of Mangum for the purpose of collection. The parties were to collect said notes for a certain per cent. and were also to advertise the said Town and sell the town lots and turn over to the said Sweet two thirds of the proceeds.

In compliance with our agreement with Sweet, I acting with others who owned the said paper, applied to the Secretary of the State of Texas, for a charter to carry on the business as above agreed upon. The Secretary of State, replied that there was no provision in the statute of the State of Texas, by which a company that traded in real estate could be organized. And in consequence nothing more was done in so far as incorporating was concerned.

The notes that we had to collect were at one time placed in my hands, to ascertain if the same were collectable. Upon an investigation of the matter myself acting with and in conjunction with all the other parties to said contract, came to the conclusion that the expense of collecting said notes would amount to more than
51 we would realize out of them. The notes were kept for a while and finally turned back to Sweet. Nothing was ever

collected on any of said notes by myself or the other parties named in said contract.

Now with reference to the sale of the lots, the parties who owned the paper run an advertisement in the paper, advertising the town of Mangum for a short while. This soon played out. Nothing was ever done with reference to the sale of the lots, except running said advertisement.

The only consideration for the conveyance recited in said contract, was as follows:—(1) That we would incorporate and secure a Charter: (2) That we would advertise and sell the lots described in said deed, and after said sales were made deliver to Sweet the Grantor, two thirds of the proceeds of said sales of said lots. The grantees did not pay Mr. Sweet any money or other consideration for said property except as above stated. No charter was obtained; no lands were sold and the notes were finally turned back to Sweet. None of the vendees ever paid or gave any sort of consideration except as above indicated.

After Company failed to procure a charter, no further interest was taken in the matter to sell the town lots or to collect the notes; and the parties who held shares in the paper traded the same or sold and nothing more was ever done towards carrying out the original contract. I was acting as a Director of said Company from the time it was first organized up to Sept. 1st, 1891 and at that time I took charge of the paper as business manager of it and continued until about Feb. 1895. We were only to act as the agent for H. C. Sweet in selling said lots and the deed was made to us as a matter of convenience, and with the view that we would transfer same to the corporation when same was duly organized which was never done.

Mr. KEATON: All that part of it stating those considerations outside of the contract and deed we object to.

Overruled. Exception.

52 Thereupon R. C. HANNAH, a witness of lawful age, testified on behalf of the plaintiffs as follows, on direct examination by Mr. S. B. Garrett:

Q. State where you reside Mr. Hannah?

A. Mangum, Greer County.

Q. State where you resided in December, 1890?

A. Same place.

Q. State whether you became acquainted with H. C. Sweet in his lifetime?

A. Yes sir.

Q. State whether you knew H. M. Ferguson and the other defendants in this suit?

A. I guess I knew them if they were members of the organization.

Q. S. C. Van Leer, E. R. Fletcher, M. E. Clark, J. H. Simpson, S. H. Tittle, F. B. Duke, L. J. Edwards, H. Y. Hoover, G. W. Lynch, G. H. Eubanks, G. L. Allen, J. A. Powers, E. A. Winkler, O. P. Elliott, G. S. Huling, I. L. Pendergraft, J. W. Logan and C. J. Edwards. Were you acquainted with all those parties?

A. Yes sir.

Q. Now state what you know about the contract, if anything, which was made by H. C. Sweet to these parties whose names I have just called?

Mr. KEATON: Objected to as incompetent, irrelevant and immaterial and to the competency of the witness and the contract being in writing is the best evidence and in fact is pleaded and admitted in the cause.

The COURT: State what you know about the contract.

A. The relation between Mr. Sweet and this deed and contract to the Mangum Star Publishing Co., whatever it was called, came about——

Mr. KEATON: We object to that as incompetent, irrelevant and immaterial and not the best evidence and to the competency of the witness and not responsive to what the court suggested.

53 The COURT: Go ahead.

Exception.

A. Came about in this way. When we had organized, Mr. Eubanks spoke to me, I think in the presence of Dr. Ferguson, I feel pretty sure he was present, in my store——

Mr. KEATON: We certainly object to outside conversations with Mr. Eubanks. Object as incompetent, irrelevant and immaterial.

The COURT: Sustained.

Q. I will show you the contract. Are you one of the parties to to that contract?

A. Yes sir.

Q. State what that Company did under that contract, if anything with reference to carrying the contract into effect?

A. I will have to read the contract first. (After reading:) This is the contract we made with Mr. Sweet.

Mr. KEATON: We object to that as incompetent, irrelevant and immaterial.

The COURT: Overruled. Exception noted.

A. We tried to do something but never did.

Q. State whether the Company collected the notes mentioned in that contract?

Mr. KEATON: Objected to as incompetent, irrelevant and immaterial.

The COURT: Overruled. Exception noted.

A. I don't believe I had the notes. I had the rest of it. I never collected any of them. I believe Mr. Eubanks had them. I don't remember anything about the notes only in a general way.

Q. What position did you hold in the Company?

A. I was secretary or treasurer, may be both, I don't remember.

Q. State whether the Company sold or conveyed any of the lots?

Mr. KEATON: Objected to as above.

The COURT: Overruled and exception noted.

54 A. They did not.

Q. State if the Company abandoned its business and if so, when?

A. They abandoned the business but as to the date I can't give that. It was something inside of a year we dropped the matter after it was taken up.

Q. Did the company ever take possession of any of the lots mentioned in the deed? Claim any ownership?

Mr. KEATON: Objected to as incompetent, irrelevant and immaterial.

The COURT: Objection sustained. Let him state the facts.

Q. Just state what was done by the Company with reference to carrying out this contract, collecting notes with reference to these lots?

Mr. KEATON: Same objection as above.

The COURT: Overruled and exception noted.

A. We failed to sell any lots. I never had to make a deed. Mr. Sweet's deed was placed in my hands, I don't know whether made to me or the Company, I don't remember but I was to make the deeds, write them up, furnish them to purchasers. I had Mr. Sweet's deed in my possession until after the thing was dropped. He asked me for it and I gave it back to him after the thing had all dropped out, just failed. They stole us all, that is the truth about it; one or two men stole everything. We got disgusted and quit. I gave the deed back to Mr. Sweet and the notes if I had them. I don't nemember having the notes. I think some one else did.

Cross-examination.

By Mr. KEATON:

Q. The reason you could not sell any of those lots,—you say you tried to?

A. We advertised them in the papers in the usual way.

Q. The reason you could not sell was because of a failure of the title of Mr. Sweet, was it not?

55 A. We never had a prospective purchaser.

Q. You don't know that the question of title was discussed by the Company, that Sweet's title was defective?

A. No sir.

Q. When Sweet asked you for the deed, you did not consult any of the other members about it, just handed it to him?

A. Yes sir. The thing had been dis-organized for sometime, the stock sold and I considered the transaction closed.

Q. How much stock was there purchased?

A. I could not tell.

Q. How much money did you put in?

A. It occurs to me I had three shares at $5 a share. I know I had an interest as much as one, may be three shares.

Q. Did you give a note for some additional payments?
A. I never gave a note at all, it was not necessary, the total was only $15.
Q. In fact, the organization of this Company and the buying of the paper and the advertising of the lots was all a part of the consideration for that deed, was it not?
A. No sir. Mr. Sweet was asked to contribute something to the welfare and helping of this institution. They wanted him to give something to that.
Q. That was his offer to the Company?
A. This contract was.
Q. You had bought the paper until after this deed and contract was made, had you?
A. I won't say because it is too long back.
Q. All one transaction?
A. I think two.

Redirect examination:

Q. Mr. Hannah, Mr. Dawson was running the paper prior
56 to the time the Company was organized?
A. Yes sir.
Q. He sold out to the Company, did he not?
A. Yes sir.
Q. There was not anything in that transaction connected with this transaction at the time of the sale of Mr. Dawson to the parties comprising the Mangum Star Publishing Co.?
A. No sir.

Thereupon S. H. TITTLE, a witness of lawful age, on behalf of the plaintiffs, was called to the stand and testified as follows:

By S. B. GARRETT:

Q. What is your name?
A. S. H. Tittle.
Q. Where do you live?
A. Near Mangum.
Q. Where did you live in 1890?
A. In Mangum.
Q. Do you know anything about the contract made by Mr. Sweet and the Mangum Star Publishing Co., in which there was a deed conveying certain interests in certain lots in Mangum to the Publishing Company?
A. Yes sir.
Q. What do you know about it?

Mr. KEATON: Objected to as incompetent, irrelevant and immaterial, indefinite and to the competency of the witness to testify under the issues.
The COURT: Overruled and exception noted.

A. It has been so long I have forgotten. I know there was a deed made and contract given by the parties. I heard the contract read.

57 Q. Was there anything done under that contract by the Mangum Star Publishing Co. towards carrying out the terms of that contract the collection of the notes mantioned and the selling of the lots described in it?

Mr. KEATON: Objected to as incompetent, irrelevant and immaterial.

The COURT: State what you know. Exception noted.

A. The lots were advertised through the papers and they tried to collect something on the notes but failed.

Q. What became of the Mangum Star Publishing Co., do you know?

Mr. KEATON: Objected to as incompetent, irrelevant and immaterial and not the best evidence.

The COURT: Overruled and exception noted.

A. They dissolved and the parties sold out their interests in the paper, at least I did. I think the others did.

Cross-examination.

By Mr. KEATON:

Q. You are one of the defendants in this case?
A. No sir, I am not.
Q. You were sued as defendant in this case?
A. No sir, I signed a disclaimer. Yes, I was defeadant.
Q. What was the purpose in getting this paper, what object?
A. Major Dawson was going to leave town, we wanted to keep it here in town. It was decided to buy, keep the paper at home.
Q. Mr. Sweet was a member of your company, was he not?
A. I believe he was. Yes sir.

Redirect examination.

Mr. A. B. GARRETT:

Q. That paper was bought from Major Dawson before any contract made with Mr. Sweet concerning sale of lots and collection of notes?
A. Yes sir, that is my recollection.

58 Recross examination.

By Mr. KEATON:

Q. Don't you know that was all done together?
A. I think not. I think we decided to buy the paper——
Q. You may have decided to buy it but did not buy it until after the contract was entered into?
A. I think we did.
Q. You did not take charge of the paper and was not running it at the time the contract was made and the deed executed, did you?
A. I am not positive about that. I believe we did.

Thereupon H. M. FERGUSON, a witness of lawful age, called on behalf of the plaintiffs, testified as follows:

By Mr. S. B. GARRETT:

Q. Where do you reside?
A. In Mangum.
Q. How long have you resided here?
A. Since 1887.
Q. You have heard the contract read between H. C. Sweet and J. G. Bogard and others composing the Mangum Star Publishing Co.
A. Yes sir.
Q. State whether or not the Company ever sold any of the lots or collected any of the notes mentioned in that contract?
A. They did not.

Mr. KEATON: Objected to as incompetent, irrelevant and immaterial and not the best evidence and to the competency of the witness.
The COURT: Overruled and exception noted.

Q. State what was done if anything under that contract?
A. Nothing to my knowledge. Something concerning
59 titles to land and records were not allowed to be made.
Q. You are the H. M. Ferguson mentioned in this contract?
A. Yes sir.
Q. And a member of the Company?
A. Yes sir.
Q. Was there any other different consideration than that mentioned in this contract for the deed given by H. C. Sweet and Anna Sweet to the Mangum Star Publishing Co. for the lots described in the deed?

Mr. KEATON: Objected to as incompetent, irrelevant and immaterial and to the competency of the witness and not the best evidence.
The COURT: Overruled and exception noted.

A. No sir, not to my knowledge.
Q. What became of the Mangum Star Publishing Co.?

Mr. KEATON: Same objection, ruling and exception.

A. It passed out of existence.

Cross-examination:

Q. How long did you maintain the paper?
A. I don't remember how long it was, not a great while.
Q. I will ask you if this is not a fact. You said something came up from Texas by which the question of Mr. Sweet's title was raised wasn't it that the Texas Supreme Court decided that a similar patent to that under which Mr. Sweet held this land was void and it therefore affected the title to the land?
A. My recollection is that it was some instructions from the State to the County officers not to record deeds or have anything to do with land transactions or something of the kind.

Q. You advertised this property for sale?
A. Yes sir.
Q. This notice came from the State officers?
A. It came from the State officers to our County officers.
60 Q. You did not have anything to do personally with the managing of this paper?
A. No sir, Nothing further than possibly advisor or something like that. No active work.
Q. You bought stock in it?
A. Yes sir.
Q. How much?
A. I believe I did not have over five or six shares.
Q. You did advertise this property for sale?
A. Yes sir, I think a short time after we bought the stock.
Q. You say there was no other consideration for this transfer except that mentioned in the deed and contract?
A. None to my knowledge.

An adjournment was then taken until Tuesday morning, August 18, 1903, at 9 o'clock, at which time the case was resumed and the plaintiffs continued the introduction of their testimony.

Thereupon R. C. HANNAH was recalled and testified as follows:

By A. R. GARRETT:

Q. State whether or not there was any other consideration for the lots mentioned in the deed executed by H. C. Sweet and wife to the Mangum Star Publishing Co., composed of J. G. Bogard and others than that of collecting the notes and selling the lots mentioned in the deed?

Mr. KEATON: Objected to as incompetent, irrelevant and immaterial and the witness having already gone over this question fully yesterday, and to the competency of the witness.
The COURT: Overruled and exception noted.

A. There was never any other consideration to my knowledge. I was never called on to pay anything for it in any way. That was the terms of the contract agreed upon among ourselves before I saw the deed.
Q. When you speak of yourselves do you mean the par-
61 ties composing this company?
A. Yes sir. We wanted the old man to give us part of these lots.

Mr. KEATON: We object to any oral conversations or wants.
The COURT: Sustained.

Q. Who first settled the 160 acres of land upon which these lots were located?

Mr. KEATON: Objected to as incompetent, irrelevant and immaterial.
The COURT: Let him answer. Exception noted.

A. Sweet was on it and claiming it. That is all I know about it.

Q. Do you know whether or not he had cultivated it prior to the 16th day of March, 1896?

Mr. KEATON: Objected to as incompetent, irrelevant and immaterial.

The COURT: What is the purpose of that?

Mr. GARRETT: To show that Mr. Sweet acquired this land of the United States, that he was in adverse possession of it in 1896 as far as these parties are concerned and that under and by virtue of an Act of Congress he acquired it as prior settler, under act of January 1897.

The COURT: Is there a record showing that fact, that he acquired title?

Mr. GARRETT: Yes sir, there is a record showing he acquired title.

The COURT: Objection overruled. Exception noted.

A. I cannot remember about how the lines run on this quarter Mr. Sweet was living and cultivating a farm on the Eastern portion of the town, whether that is in this town proper or not I don't know. Also an orchard and plot still further West, I think they were in this town property.

Q. Now with reference to the lots mentioned in the deed of H. C. Sweet and Anna Sweet to J. G. Bogard and others, state
62 whether or not that Company ever took any possession adverse to Mr. Sweet of those lands?

Mr. KEATON: Objected to as incompetent, irrelevant and immaterial and not within the issues and to the competency of the witness.

The COURT: Overruled. Exception noted.

A. None to my knowledge.

Q. Have you lived here in the town of Mangum and been in business and familiar with the conditions existing in Mangum since this deed was executed?

A. Yes sir.

Cross-examination.

By Mr. KEATON:

Q. You are one of the defendants in this case, are you not?

A. I think not.

Q. You were sued in this case?

A. I don't believe I was, might be. I am not able to answer that, I don't know. I gave a quit claim deed to that and I supposed that ended my part of it.

Q. You were originally named as one of the defendants?

A. Possibly so.

Q. Afterwards gave a quit claim deed?

A. Yes, and considered myself out of the question.

Q. You gave the deed after you knew the suit was commenced?

A. I don't remember.

Thereupon the plaintiffs rest their case and the defendants presented the following demurrer to the evidence presented by the plaintiffs, and filed the same on the 18th day of August, 1903;

63 TERRITORY OF OKLAHOMA, *County of Greer, ss:*

In the District Court.

No. 276.

F. H. SWEET ET AL., Heirs of H. C. Sweet, Plaintiffs,
vs.
J. G. BOGARD ET AL., Defendants.

Demurrer to Evidence of Plaintiffs.

Comes now defendants, J. G. Bogard, J. H. Simpson, H. Y. Hoover, L. J. Edwards, G. S. Huling, S. C. Van Leer, J. A. Powers, M. C. Logan, *pro se* and as mother and next friend of Addie V. Logan and James W. Logan, minor heirs of J. W. Logan, deceased, Belle Pendergraft, *pro se* and as mother and next friend of Claude D. Pendergraft, Conway Pendergraft, Myrtle E. Pendergraft, Ison P. Pendergraft and William Pendergraft, minor heirs of I. L. Pendergraft, deceased, and demur to the evidence of plaintiffs upon the ground that said evidence wholly fails to establish any cause of action against these defendants, but, on the contrary, affirmatively shows that said defendants are entitled to the relief prayed for in their answer.

SHARTEL, KEATON & WELLS,
Attorneys for Above-named Defendants.

64 which demurrer to the evidence was by the Court overruled, to which the defendants excepted.

The following evidence was then produced on behalf of the defendants:

L. J. EDWARDS, a witness of lawful age, being duly sworn, testified as follows, in answer to questions propounded by Judge Keaton:

Q. Where do you live?
A. Out here in North Mangum.
Q. How long have you resided in or near Mangum?
A. For the last seven or eight years.
Q. You are one of the defendants in this action?
A. Yes sir.
Q. You know about the deed and contract that has been read here being executed?
A. Yes sir, I have heard of it.
Q. Do you know, Mr. Edwards, whether or not that deed and contract were executed before or after you bought this Mangum Star Publishing Co.?
A. All the same time is my understanding of it.

Q. Do you know whether or not the deed was a part of the inducement to cause you to buy into that paper and take charge of it?
A. Yes sir, Mr. Sweet offered to do that to get us to buy this paper.
Q. How much money was paid for the paper?
A. I don't know how much was paid. I paid my part $10.
Q. You paid $10?
A. No, sir, I paid my part.
Q. Your part of the $10 that went to Mr. Sweet?
A. Yes sir.
Q. Then you know about that $10 being paid to Mr. Sweet?
A. Yes, sir, paid right up in this old wagonyard here.
65 Q. Did you put up your part at the time?
A. Yes sir.
Q. How much money did you put into the paper?
A. I forget now. I had about the biggest share of any I think. About four or five shares.
Q. You know what each share was worth?
A. $5 each.
Q. Now, Mr. Edwards do you know of anything else that was done by your Company as part consideration for this deed?
A. Running this old paper here for a long time.

Mr. GARRETT: We object to the witness testifying to transactions that occurred between the company and H. C. Sweet and we move the Court to exclude the evidence of the witness in which he stated that he paid his part of the $10 to H. C. Sweet over in a wagon yard for the reason that the proof shows H. C. Sweet is dead and he cannot testify to transaction between the company and H. C. Sweet when the matters are in controversy between Sweet's heirs.
The COURT: Overruled. Exception noted.

Q. What else was done under this contract, if anything and in pursuance of it in addition to running the paper as part of the consideration?
A. Build up this town. This old court house and jail I think was part. We kept the county seat here, that was what the old man was after. Gave us an interest in the lots to hold the county seat here. They were trying to move it.
Q. How much money was put into that jail or court house?
A. I think about $700 made up here.
Q. Did this company put that money in?
A. Yes, sir and a few outsiders put some in.
Q. How much money did you put into that if any?
66 Mr. GARRETT: We object to that as being incompetent, irrelevant and immaterial.
The COURT: Answer the question. Exception noted.

A. I put in first $50 and they came to me again and I put in some more, some people having failed. Paid $50 to Mr. Eubanks when the thing started.
Q. That is, Mr. Eubanks a member of your company?
A. Yes sir.
Q. I want to ask you whether or not you would have purchased

this stock in this paper and gone into the Company and put up the money to build the court house and jail but for the fact of Mr. Sweet having given you the lots under this deed, an interest in this property?

Mr. GARRETT: Objected to as calling for the conclusion of the witness and as incompetent, irrelevant and immaterial.

The COURT: Let him answer. Exception noted.

A. No sir, I would not if not for the interest in the lots.

Q. Did you ever authorize Mr. Hannah or anybody else to rescind this contract that you had with Mr. Sweet and turn him back any of these notes or that deed for you?

A. No sir, I went to Mr. Hannah to get the deed after they sued us and he had turned it over to Mr. Sweet.

Q. You supposed that the deed was still in the hands of the company or some of its members?

A. Yes sir.

Q. Did you ever have a meeting of the members of your Company and take action on that matter as to whether or not they would rescind the contract with Mr. Sweet?

A. No, sir, I don't remember any.

Q. If there was any such meeting as that and any action as that you were not present and did not know anything about it?

A. That is correct.

67 Cross-examination.

By Mr. A. R. GARRETT:

Q. You say you paid your part of the $10 to Mr. Sweet?

A. Yes sir.

Q. How much did you pay him?

A. I don't recollect, about 50 cts. or $1.

Q. Who was present?

A. Whole house full of people.

Q. All the members of this company?

A. I don't recollect whether all the members were there or not. Part collected afterwards.

Q. Who was present besides yourself and Mr. Sweet?

A. I don't remember.

Q. Just mention one present?

A. Mr. Logan.

Q. Mention another man who was there and is living?

A. I think Mr. Simpson was there, good big crowd. I thought all were there.

Q. Who else beside Mr. Simpson?

A. Judge Huling.

Q. Who else?

A. I don't remember. There were others present besides the members of this company.

Q. Was Mrs. Anna C. Sweet there?

A. No, sir, never in the house while doing business that I know of.

Q. Now you have answered that you bought this Mangum Star

paper after this deed was made. Is it not a fact that Mr. Dawson proposed to sell that paper and there was a Company organized to buy that paper and did buy it before any deed was made?

A. No sir, Mr. Sweet was the very first man that said anything about it. He got me into it.

68 Q. Is it not a fact that there was not any such a thing as this contract or this deed for these lots being given until after Mr. Dawson's paper was bought up and he left the town?

A. No sir, that was not the first. I always thought Mr. Sweet and Mr. Dawson was in together.

Q. You never set up any claim to this land?

A. I never have released any. No, sir.

Q. Did your company ever render any of this land for taxes?

Mr. KEATON: Objected to as incompetent, irrelevant and immaterial.

The COURT: Overruled. Exception.

A. No, sir.

Q. Did you ever pay any taxes on it?

Mr. KEATON: Same objection, ruling and exception.

A. No, sir.

Q. Is it not a fact that you, J. Powers and others never set up any claim to this land in any manner or claimed to have any interest in it until after you had started a town on the north side of these lots named North Mangum?

Mr. KEATON: Objected to as incompetent, irrelevant and immaterial.

The COURT: Objection overruled and exception noted.

A. I claimed it all the time.

Q. Is it not a fact that in booming your side of this town your partner, Mr. J. Powers in your presence, began discussing the fact that there was a deed on record to J. G. Bogard and others among them yourself and therefore the title to this part of the town was not good and is it not the first time you ever set up any claim to these lots?

Mr. KEATON: Objected to as incompetent, irrelevant and immaterial and hearsay evidence.

The COURT: Let him answer. Exception noted.

69 A. No, sir, it is not.

Q. Did you ever take any possession of any of the lots mentioned in that deed.

A. No sir, Mr. Simpson and I talked about it.

Q. Don't you know as a matter of fact before H. C. Sweet could enter this quarter section of land upon which these lots are located that it would be necessary for him to advertise in the papers here thirty days' notice to any one who had adverse claim or claimed any interest in any of the lots to file their objections with the local land office before he was permitted to make the entry?

A. I knew he had to do that, yes, sir.

Q. Did you ever come and file any protest or set up any claim or interest at the time this notice was published or before the 30 days run out?

A. No, sir, I did not, but I kept a man from doing so.

Q. You never appeared at the Land Office and filed any protest or objection or set up any claim of interest to any of the lots mentioned in the deed or any portion of the quarter section upon which these lots are situated, did you?

A. No, sir.

Q. Did any of your associate defendants make any objection within your knowledge to the Land Office to Sweet's entering the lots?

A. No, sir, they did not go to the Land Office.

Q. You knew as a matter of fact that Mr. Sweet for a number of years had in cultivation a portion of the quarter section upon which these lots are situated?

A. No sir.

Q. Didn't you know as a matter of fact that on the 40 acre block S. E. of the jail *with* composes 40 of the 160 acres mentioned in this suit that he did have a portion of it in cultivation for a long
70 number of years prior to the 16th day of March, 1896 up and after the time he entered into possession thereof?

A. Jim Logan had some there.

Q. I was asking you if Mr. Sweet did not have a portion of it in cultivation?

A. Not, that I know of.

Q. Didn't Mr. Sweet have a little patch of land on these lots in cultivation prior to the 16th day of March, 1896?

A. No sir, I did not think it was him. Albert had some and Frank had some. They claimed it.

Q. Who is Albert you mention?

A. Albert Sweet, brother of H. C. Sweet.

Q. Who is Frank?

A. Frank Sweet, son of H. C.

Q. Was Frank Sweet living with his father at this time and unmarried.

A. Yes sir.

Redirect examination.

By Mr. KEATON:

Q. You say you did not protest against Mr. Sweet making entry on this land but kept another party from protesting, why did you do that?

A. He promised to make all this title good——

Mr. GARRETT: We object to any promise that he may claim Mr. Sweet made to him.

The COURT: Overruled. Exception noted.

Recross examination.

By Mr. A. R. GARRETT:

Q. With reference to the party that you kept from filing a protest that was Sam Hall was it not?

A. Yes, sir.

Q. And Sam Hall had originally bought three lots from
71 H. C. Sweet not embraced in these lots mentioned in this deed now in controversy had he not?

A. He bought three lots and sold those lots to me.

Q. And those three lots were not embraced in this deed?

A. I don't think they are.

Q. As a matter of fact you know they are not?

A. At that time they were not.

Q. They are not included in the lots conveyed by H. C. Sweet and his wife to J. G. Bogard and others?

A. No, sir, I think not.

Q. The reason why you wanted to keep Hall from protesting was because you wanted Hall to make your title to the lots later on.

A. He put the land up to me and could not make a deed to me.

Q. He had put the lands up as security?

A. Yes, sir.

Q. You wanted Hall's title to be made good so that the title to you would be good and you kept Hall from protesting upon the understanding with Mr. Sweet that he would make a good title when he acquired a patent from the United States?

A. He said he would make all titles good.

Q. In that transaction it was dollars and cents to you to have Mr. Hall not protest, was it not?

A. Dollars and cents all the time with me.

Q. I mean in that particular transaction the reason you kept Hall from protesting, persuading him not to protest, was in order that you could acquire a good title?

A. These lots and other lots.

Q. I mean these particular lots?

A. Yes, sir.

Q. Were there any other lots?

72 A. Mr. Sweet said he would make all these title good if we would let him purchase this townsite.

Q. Was there ever any mention of his making the title good to these J. G. Bogard *et al.* lots involved in this controversy?

A. No, sir, he did not say anything about these particular lots.

Q. He had been exercising control over all of this property mentioned in this deed and you and your company had never undertook to exercise any control over it since the deed was made, had you?

A. Yes, sir, we advertised it a long time.

Q. Did you run the paper?

A. No, sir.

Q. Mr. Eubanks ran it, didn't he?

A. No, sir, not all the time. I never ran it. Fellow named Williams ran it, and others.

Thereupon J. H. SIMPSON, a witness of lawful age, being sworn, testified on behalf of the defendant as follows:

Direct examination by Mr. KEATON:

Q. State your name?
A. J. H. Simpson.
Q. Where do you live?
A. In Greer County.
Q. You are one of the defendants here in this case?
A. I am.
Q. You remember about the execution of this deed from Mr. Sweet to your Company and the contract by your Company?
A. I do.
Q. When was this deed and this contract executed with reference to the time that you became a member of this Publishing
73 Company?

A. This question was first called up of buying the Star out, and the contract entered into the latter part of 1890 and the first of 1891 along somewheres near the holidays, the latter part of 1890 and the first part of 1891. I don't remember the exact date.

Q. I want to know whether the contract and deed were executed before or after or at the same time you bought out this paper?

Mr. GARRETT: Objected to as leading and suggestive.
The COURT: Overruled and exception noted.

A. I cannot answer that question.
Q. Was this deed executed before or after you bought this Star out?
A. It was after we bought the Star out.
Q. Had it been agreed on before?
A. Yes, sir, it was agreed on before, the transactions were side by side.
Q. Now then how much money, if any did you put into this Star in pursuance of this contract.

Mr GARRETT: Objected to as incompetent, irrelevant and immaterial.
The COURT: Overruled and exception.

A. I had three shares. I don't remember exactly what a share was worth. It seems to me it was $25. I paid for 3 shares.
Q. Were those shares all paid out at once or how was that?
A. Each party agreed to take so many shares and notes were given in payment.
Q. The first payment of each shar- was $5 was it not?
A. That is my memory of it.
Q. The rest of the $25 was paid in installments?
A. I remember paying the last payment off myself.
Q. Do you know who received the deed that was executed by Mr. Sweet and wife which particular member of your Com-
74 pany?

A. It is my impression that Mr. Logan had it in his custody.

Q. Mr. Logan is dead, isn't he?

A. Yes sir, Mr. Logan and I made the first contract with Mr. Sweet. We went from a meeting of the members of the Company to see Mr. Sweet to see what he would do and we were to make a report to the Company on our return.

Q. That is the other members of the Company were waiting?

A. Yes, sir.

Q. At the time you and Mr. Logan went to see Mr. Sweet had you purchased the paper or not?

A. No, sir, the deal had not been closed.

Q. You closed it shortly after?

A. After our report, yes, sir.

Q. Was there any other consideration performed or paid by the members of your so-called Company other than the effort to collect these notes mentioned in this contract and sell the lands mentioned therein?

A. I think so.

Q. What was it?

A. I remember paying my part of a consideration. I paid my part of the consideration in that deed to Mr. J. W. Logan when I signed the contract.

Q. You mean the $10 consideration?

A. Yes sir.

Q. Was there anything done by the members of your Company in addition to that in the way of holding the county seat here, etc.

Mr. GARRETT: We object as being wholly immaterial and irrelevant.

The COURT: Overruled and exception noted.

A. Yes, sir.

Q. What was done in that regard?

A. One effort was made to move the county seat from this
75 point wherein I for one and men around here about Mangum took active steps in working day after day in the effort to keep it here. Another action was taken——

Mr. GARRETT: We object to his stating his actions.

The COURT: Objection sustained.

Q. What did your company do if anything as part of the consideration for this deed?

Mr. GARRETT: Objected to as leading and suggestive.

The COURT: Let him answer. Exception noted.

A. We bought that press, retained it here, hired men to run it and ran it.

Q. State whether or not any effort was made to collect these notes mentioned in this contract?

A. Mr. R. C. Hannah was appointed by the Company to do this business. I don't know what effort he made.

Q. Did you or the members of your Company contribute anything to the building of this court house and jail?

Mr. GARRETT: Objected to as being incompetent, irrelevant and immaterial.

Q. Was that a part of the consideration for this deed. What was the consideration?

A. The consideration of the deed from Mr. Sweet was to take the stock buy this paper out, retain it here and help to upbuild Mangum and he in lieu thereof, remunerate us with an interest in this town. That was the agreement.

Q. You stated in answer to some question about moving the county seat at the time. Did it come up at that time or afterwards.

A. The fight came on afterwards.

Q. Did you ever authorize Mr. R. C. Hannah or anbody else to make any rescission of this contract and deed you had made with Mr. Sweet or to return him the deed?

76 A. I did not.

Q. Did you at any time abandon or relinquish your interest in this real estate that had been conveyed to you?

Mr. GARRETT: Objected to because leading.

The COURT: Overruled and exception noted.

A. No, sir.

Cross-examination.

By A. R. GARRETT:

Q. Did you ever assert any claim or right or interest in any of the lots involved prior to the filing of this suit in any manner?

A. Yes, sir.

Q. How did you assert it?

A. By a declaration that I had an interest in the warranty deed to the different parties.

Q. Mr. Powers was the first party who spoke to you of a warranty deed being in existence to you and others did he not?

A. No sir.

Q. That was after Mr. Powers and Mr. Edwards had established the rival town of Mangum on the north side of the railroad was it not?

A. No sir.

Q. You have been a citizen of this town and community since 1890 have you not?

A. Since 1887.

Q. Since the making of this deed on Feby. 10, 1891 you have lived in Mangum and near to it, have you not?

A. I have.

Q. State whether or not you or your Company ever took control or possession of any of the property involved in this suit?

A. Yes, sir.

Q. What kind of possession did you take?

77 A. Took absolute possession of the property the Star sets on. Not the Star Office now but where it used to be.

Q. I will ask you if that Star office was not situated upon land

excepted from this conveyance or deed conveying the lands in controversy?

A. I understood that the Star office building was with the Company property.

Q. I will ask you if that Company at that time ever made any deed for that property to any one?

A. Not that I know of.

Q. I will ask you if that property has not been sold time and time again and that you never have asserted any right, title or interest to any part of it?

A. I don't know anything about any change in the title.

Q. Did the Mangum Star Publishing Co. cease to have any existence as a company sometime during the year 1891 after this deed was made and executed?

A. Not that I have any knowledge of.

Q. Did the Company ever have any Board of Directors?

Mr. KEATON: Objected to as immaterial and as it is a partnership.

The COURT: Sustained.

Q. I will ask you if the Company did not sell out its interest in the paper to Eubanks and Thacker?

A. I think most of the individual members, if not all, sold out their interests in the paper to those persons.

Q. And they got paid for those shares or interests they had in the Star?

A. I got paid for mine.

Q. You sold your stock in the Company when you sold out to Mr. Eubanks and Mr. Thacker?

78 A. I did not.

Q. Did you have the shares of stock issued to you?

A. Yes sir, we had a receipt showing the shares, I think.

Q. Have you those receipts now?

A. I don't know whether I have got mine yet or not. I suppose I have somewhere among my papers.

Q. Did your Company ever perfect any organization by getting a charter from the State of Texas incorporating it?

A. I do not know. I think it did not.

Q. Who was in possession of the lands in controversy and claimed possession of them on the 16th day of March, 1896?

Mr. KEATON: Objected to as incompetent, irrelevant and immaterial and not within the issues in this case.

The COURT: Let him answer. Exception noted.

A. I do not know. The United States Government I suppose.

Q. Was there any one living on this land and occupying these lots at that time?

Mr. KEATON: Objected to as incompetent, irrelevant and immaterial and not within the issues in this case.

The COURT: Overruled. Exception noted.

A. On a part of these lots there were people.

Q. Had you or your company ever collected any rents from the parties living on these lots?

Mr. KEATON: Objected to as incompetent, irrelevant and immaterial.

The COURT: Overruled and exception noted.

A. Not that I know of.

Q. State whether or not you or your Company ever paid any taxes on any of the lots mentioned in the controversy.

Mr. KEATON: Objected to as above.

To which same ruling was made and exception noted.

79 Q. I will ask you as a matter of fact if the county seat fight did not come off in 1895?

A. It was along about that time, '94 or '95.

Q. I will ask you as a matter of fact if the county seat fight did not come up before the people of Mangum at the time this contract and deed was made?

A. It was afterwards. It had been put before me by Mr. Sweet himself. When the county seat fight came up we took up the subscriptions to build a public school house and jail and other buildings.

Q. You speak of contributions to build public school houses and jail. I will ask you if that was not a public subscription to which citizens outside of the Company contributed?

A. That is my understanding and knowledge. Others contributed as well as the Company.

Q. You do not know whether all the members of your company contributed or not, do you?

A. I do not know one that did not.

Q. You do not know whether all of them did?

A. I think they all did, every one of them.

Q. How much did J. A. Powers pay?

A. I could not tell.

Redirect examination.

By Mr. KEATON:

Q. You were asked if your Company or any of them paid any taxes on these lots. You did not pay any until it became a part of Oklahoma?

A. We never paid any.

Q. Never paid any to the State of Texas?

A. No, sir, I never paid any and don't know anybody that did.

Recross examination.

By Mr. GARRETT:

80 You did not know whether Mr. Sweet paid any taxes or not?

A. No, sir, I do not.

Thereupon G. S. HULING, a witness of lawful age, on behalf of the defendants, testified as follows in answer to questions propounded by Mr. Keaton:—

Q. Where do you live, Judge?
A. In Mangum.
Q. How long have you resided here?
A. About sixteen years. I have not been in town altogether.
Q. You are one of the defendants in this suit of Sweet and others *vs.* Bogard and others?
A. Yes, sir.
Q. A member of this so-called Star Publishing Company?
A. Yes, sir.
Q. You were living here in 1890 and 1891 when this deed was made?
A. Yes, sir, I was here then in town.
Q. How much, if any interest did you take in this Company?
A. I had two shares.
Q. Do you know how much a share was worth?
A. I think $10 a share, altogether I paid $20, that is what I was out.
Q. How long did this Company exist?
A. I don't know just how long they did run.
Q. Give your best recollection?
A. As far as the Company was concerned, I don't know.
Q. Up to the time that the paper was disposed of how long did he run up to that time?
A. I could not say positively; not two years, a year or two
81 years, may be not so long.
Q. As a member of that Company did you ever at any time authorize Mr. Hannah to make rescission of this contract and deed with Mr. Sweet or return him the deed?
A. No, sir.
Q. What was the consideration for that deed?
A. The consideration of the deed was that we were to buy the Star and advertise the town in a general way and dispose of land and do everything we possibly could to hold the county seat at Mangum.
Q. Did you use your best efforts to do that?
A. Yes, sir, we bought the Star, ran it in the interests of the town did quite a lot of advertising all over the State of Texas, sent out circulars, such things.
Q. Your company did that?
A. Yes, sir.
Q. You advertised these lots for sale?
A. Yes, sir.
Q. What else if anything did the members of your Company do in the way of keeping the county seat from being moved?
A. We had a county seat fight after that and the Company did what they could and other citizens did too. I don't know whether building this jail down here was done by the Company or not. I

know I made a compromise and they built the building. Other people donated as we did and it was a general interest.

Q. Did you put up any of the money consideration that was expressed in the deed as having been paid?

A. Yes, sir.

Q. How much?

A. I think it was $1 my share of it.

Q. You put up your share?

82 A. Yes, sir. We had a meeting down there in the old court house. Mr. Logan and Mr. Simpson brought that question up of the consideration being paid.

Q. Was all the money raised there?

A. I don't know whether it was or not. My part was then paid. I paid it to Mr. Logan.

Q. Has any of that money or any money that you put into this Star Publishing Co. ever been paid back to you by Mr. Sweet or anybody else or tendered back?

A. Never got a cent.

Q. Anybody ever tender you any money back?

A. No, sir.

Cross-examination.

By Mr. GARRETT:

Q. When was the Mangum Star bought out by the Company that you formed a member of?

A. I am a poor hand to remember. It was while I was County Judge here, in 1890 or 1891.

Q. I will ask you if as a matter of fact it was not bought prior to December, 1890?

A. I could not tell. It was while I was here. I could not tell without the records.

Q. It was bought before any deed was made from Mr. Sweet to J. G. Bogard yourself and others and before the contract was entered into by which that Publishing Company was to advertise Mangum, was it not?

A. I could not tell. I know they got up the Company and know they took stock in it.

Q. You say you paid your part of the consideration expressed in the deed. What is the consideration expressed in the deed?

A. I don't know. I think my part of the consideration 83 was about $1 and that the consideration was $10.

Q. Who was present when you paid it?

A. Mr. Logan and Mr. Simpson and I think Mr. Francis was there.

Q. You paid to Mr. Logan, did you?

A. Yes, sir, and Mr. Simpson was there also.

Q. Was Mr. Logan County Clerk?

A. Yes, sir.

Q. Did Mr. Logan collect all the money you saw paid that day?

A. I don't know whether he got it all or not. It was all collected on that day.

Q. When did your Company dissolve as a partnership and cease to have existence as a Company?

A. I don't know.

Q. You were Probate Judge of Greer County in 1890 and 1891?

A. Yes, sir, 1890 and 1891.

Q. In the fall of 1890 the Commissioners' Court authorized you to enter into a contract and agreement with the citizens of Greer County to rebuild the jail and court house, did they not?

A. They authorized me to go to Vernon and compromise the suit then pending in the Court of Appeals.

Q. They also authorized you to contract with the citizens for subscriptions to rebuild the court house, did they not?

A. Yes, sir.

Q. There was no order authorizing you to contract with the Mangum Star Publishing Company, was there?

A. I do not remember, do not know anything about it. It had to be done by act of the Commissioners' Court.

Q. You knew that Mr. Sweet was in possession of the land in controversy and exercised ownership and control of it up to the commencement of this suit since 1891, did you not?

84 Mr. KEATON: Objected to as incompetent, irrelevant and immaterial and not within the issues in this case.

The COURT: Overruled and exception noted.

A. I did not know anything about it. I did not know whether old man Sweet had any title to the land or not. There was no objection raised to it.

Q. You never set up any claim to these lots in any manner prior to the commencement of this suit?

A. Never.

Q. Never claimed any interest in these lots in any manner?

A. No, sir, I knew I had some money in this contract.

Q. The money you had was in the Star Publishing Company, was it not?

A. Yes, sir, and deed was given to us in consideration of that. I knew we had a deed to the property.

Q. When was the first time you knew that a deed was in existence and of record?

A. When we organized the Company we knew there was a deed.

Q. After the Company had ceased to do business when was the next time your attention was called to the fact that there was a deed to the lots?

A. When Mr. Frank Sweet brought suit against us to perfect title.

Q. Up to that time you made no claim to any of the lots involved in this suit?

Mr. KEATON: We object as incompetent, irrelevant and immaterial.

The COURT: Overruled and exception noted.

A. No, sir.

Q. It was your understanding as a member of that partnership was it not that the contract between the partnership and Mr. Sweet had been abandoned?

85 A. I do not know anything about it, whether abandoned or not.

Q. It had been abandoned, had it not?

A. I don't know.

Q. So far as you are a member of that partnership it had been?

A. I just about expected I never would get anything out of it.

Redirect examination.

By Mr. KEATON:

Q. You started to make an explanation to one of Mr. Garrett's questions when he asked you why you did not object to Mr. Sweet's possession if you claimed any interest?

A. Because I knew if we had protested against it Mr. Sweet could not perfect the title. Mr. Sweet agreed if we would let him go on he would make his title good. So far as I know he made the title good.

Recross-examination.

By Mr. A. R. GARRETT:

Q. You did not know anything about any protest or your right to protest against his entry to these lots, did you?

A. We talked about it a certain day when Samuel Hall was trying to get it.

Q. Did you have a meeting of the members of that Company?

A. No, sir, just a private conversation.

Q. Did you know at the time this deed was of record?

A. Yes, sir.

Q. Did you examine the deed?

A. No, sir, I never did.

Q. Who did you talk with?

A. Mr. Simpson.

Q. Where was it at?

A. In town somewhere. I thought they ought to go on,

86 let Mr. Sweet perfect his title.

Q. You never went to Mr. Sweet or any of the members of your company after he obtained patent to these lots and demanded any deed from him?

A. No, sir, I never did. I don't know whether the rest did.

Thereupon the defendant rested his case.

In rebuttal the plaintiff offered the following testimony:

R. C. HANNAH:

By Mr. A. R. GARRETT:

Q. I will get you to examine these receipts. When were they placed in your possession and what are they?

A. They came into my possession at various times.

Mr. KEATON: We object to his stating what they are.

The COURT: I suppose they each show that.

Mr. GARRETT: We now offer in evidence a receipt from J. W. Logan to R. C. Hannah for $5 as 20% payment of a share in the Mangum Star Printing & Publishing Association, dated November 26, 1890 and ask it be marked Exhibit A.

Mr. GARRETT: We now offer in evidence a receipt from J. W. Logan to E. R. Fletcher for $5 as 20% payment of a share in the Mangum Star Printing & Publishing Association, dated November 22, 1890, and ask it be marked Exhibit B.

Mr. GARRETT: We now offer in evidence a receipt to H. M. Ferguson from J. W. Logan for $5 as 20% payment of a share in the Mangum Star Printing & Publishing Association, dated November 26, 1890, and ask it be marked Exhibit C.

Mr. GARRETT: We now offer in evidence a receipt from J. W. Logan to O. P. Elliott for $5 as 20% payment of a share in the Mangum Star Printing & Publishing Association, dated November 26, 1890, and ask it be marked Exhibit D.

We now offer in evidence a receipt from J. W. Logan to
87 E. A. Winkler for $5 as 20% payment of a share in the Mangum Star Printing & Publishing Association, dated November 26, 1890, and ask it be marked Exhibit E.

Q. Were those receipts given for the payment of one fifth interest in a share of the Mangum Star Printing & Publishing Association?

A. Yes, sir, for that purpose, as expressed on the face of them.

Q. When was the Magnum Star purchased by this association of persons of whom you formed a member?

Mr. KEATON: Objected to as incompetent, irrelevant and immaterial and repetition and not proper rebuttal.

The COURT: Let him answer. Exception noted.

A. I cannot answer.

Q. State whether or not it was prior to the date mentioned on these receipts?

A. Yes, sir.

Mr. KEATON: It was about the time of the execution of these receipts, was it not?

A. Those receipts are of different dates.

Mr. GARRETT: Who contributed to the rebuilding of the court house and jail in Mangum in 1890?

A. The citizens of the town and the Company.

Q. Was the rebuilding of that jail any part of the consideration for a deed to the lots mentioned in the deed in this case?

A. Not to my knowledge.

H. M. FERGUSON (recalled).

By Mr. GARRETT:

Q. State whether or not the rebuilding of the court house and jail in Mangum was a part of the consideration for the execution of the deed from H. C. Sweet and wife to J. C. Bogard and others constituting the Mangum Star Publishing Association?

88 A. Not in the least.

Q. State whether or not the Mangum Star was bought by this association of people prior to the date of the execution of the contract and deed mentioned in this suit?

Mr. KEATON: Objected to as incompetent, irrelevant and immaterial and not proper rebuttal.

The COURT: Overruled and exception noted.

A. It was before.

Q. State whether or not the buying of the Mangum Star was any part of the consideration for the making of this deed by Mr. Sweet and wife to this Company?

Mr. KEATON: Same objection.

Overruled and exception noted.

A. No part of it.

Cross-examination.

By Mr. KEATON:

Q. Do you know that Mr. Simpson and Mr. Logan had gone to see Mr. Sweet prior to the time you bought this paper and when you were having a meeting and it was on their report back to the meeting of the members of this Company as to what Mr. Sweet had agreed to do that the property was purchased?

A. No, sir, the circumstances of the purchase of the paper was to prevent the county seat being moved.

Q. Do you remember Mr. Logan and Mr. Simpson going from the meeting before you bought the paper to see Mr. Sweet to see what he would do?

A. I don't remember.

Q. You did not say they did not go?

A. No, sir.

Thereupon the plaintiffs rested and the case was declared closed.

After hearing the arguments of counsel, the court decided for the plaintiffs.

89 TERRITORY OF OKLAHOMA, *County of Greer:*

I do hereby certify that the foregoing and annexed copy of the proceedings in the case of Sweet *et al. vs.* Bogard *et al.*, No. 276, is a true and correct copy of the evidence taken by me in the trial

of said cause in short-hand and by me transcribed into typewriting, and the exhibits produced in evidence in said cause.

THOMAS R. CLIFT,
Court Stenographer.

Filed Oct. 15, 1904.
BENJ. F. HEGLER,
Clerk Supreme Court,
By JESSIE PARDOE, *Deputy.*

90 EXHIBIT "A."

No. 14. MANGUM, TEXAS, *Nov.* 26, 1890.

Received of R. C. Hannah the sum of Five Dollars the same being for 20 per cent. of one share in the Mangum Star Printing & Publishing Association and being the 1st payment thereon.

$5.00.

J. W. LOGAN, *Secretary.*

EXHIBIT "B."

No. 3. MANGUM, TEXAS, *November* 22, 1890.

Received of E. R. Fletcher, the sum of Five Dollars the same being for 20 per cent. of one share in the Mangum Star Printing & Publishing Association and being the 1st payment thereon.

$5.00.

J. W. LOGAN, *Secretary.*

EXHIBIT "C."

No. 13. MANGUM, TEXAS, *Nov.* 26, 1890.

Received of H. M. Ferguson the sum of Five Dollars the same being for 20 per cent. of one share in the Mangum Star Printing & Publishing Association and being the 1st payment thereon.

$5.00. J. W. LOGAN, *Secretary.*

91 EXHIBIT D.

No. 16. MANGUM, TEXAS, —— 26, 1890.

Received of O. P. Elliott the sum of Five Dollars the same being 20 per cent. of one share in the Mangum Star Printing & Publishing Association and being the [illegible] payment thereon.

$5.00. J. W. LOGAN, *Secretary.*

EXHIBIT E.

No. 15. MANGUM, TEXAS, *Nov.* 26, 1890.

Received of E. A. Winkler the sum of Five Dollars the same being 20 per cent. of one share in the Mangum Star Printing & Publishing Association and being the 1st payment thereon.

$5.00. J. W. LOGAN, *Secretary.*

92 And thereafter and on the 21st day of August, 1903, defendants filed their motion for a new trial, which said motion is in words and figures following, to wit:

93 TERRITORY OF OKLAHOMA, *County of Greer, ss:*

In the District Court.

No. 276.

F. H. SWEET ET AL., Heirs of H. C. Sweet and Anna Sweet, Deceased, Plaintiffs,

vs.

J. G. BOGARD ET AL., Defendants.

Motion for New Trial.

Comes now defendants, J. G. Bogard, J. H. Simpson, H. Y. Hoover, L. J. Edwards, G. S. Huling, S. C. Van Leer, J. A. Powers, M. C. Logan *pro se* and as mother and next friend of Addie V. Logan and James W. Logan minor heirs of J. W. Logan, deceased, Belle Pendergraft, *pro se* and as mother and next friend of Claude D. Pendergraft, Conway Pendergraft, Myrtle E. Pendergraft, Isom P. Pendergraft and William Pendergraft, minor heirs of I. L. Pendergraft, deceased, and move the Court to vacate and set aside its finding and decision, this day rendered by said Court in favor of plaintiffs in said above entitled action and to grant said above named defendants a new trial thereof for the following reasons, which affect materially their substantial right, to wit:

(1) The said finding and decision is contrary to the evidence.

(2) The said finding and decision of said court is contrary to law and to the weight of the evidence.

(3) The said finding and decision is not supported by the evidence.

(4) The Court erred in admitting certain incompetent, irrelevant and immaterial testimony on behalf of plaintiffs and over the objections of these defendants.

(5) For errors of law occurring at the trial and duly excepted to by these defendants at the time.

SHARTEL, KEATON & WELLS,
Attorneys for Above Named Defendants.

94 And thereafter, on the 16th day of *October*, 1903, the court overruled the said motion, and rendered the following judgment:

95 And thereafter and on the 17th day of August 1903, the court being fully advised in the premises overruled said motion and rendered judgment, which said judgment is in words and figures following to wit:

96 *Journal Entry.*

HEIRS OF H. C. SWEET
vs.
J. G. BOGARD ET AL.

On August 17, 1903, this cause came on to be heard. The plaintiffs appeared by their attorneys, Garrett & Garrett, and defendants, J. G. Bogard and others, who filed answer in this cause, appeared by their attorneys, J. R. Keaton, and all parties announced ready for trial, waived a jury and submitted this cause to the court without the intervention of a jury both as to matters of law as well as of fact. And the court having heard the evidence submitted and the argument of counsel, took the case under advisement for consideration and decision.

And thereafter, on the 21st day of August, 1903, the court having fully considered the case finds in favor of the plaintiffs, as prayed for in plaintiffs' petition. And it appearing to the court that the following named defendants have filed in this cause a disclaimer, each disclaiming any right, title or interest whatever in or to any part of the lots, blocks, lands, real estate and premises mentioned and described in plaintiffs petition by virtue of the deed and contract mentioned in said petition, namely:

George L. Allen, H. M. Ferguson, O. P. Elliott, F. B. Duke, G. H. Eubank, R. C. Hannah, G. W. Lynch, S. H. Tittle, W. L. Pendergraft, and M. E. Clar; It is therefore considered and adjudged by the court that all cloud occasioned by reason of the deed and contract mentioned in plaintiffs petition on the lands therein and hereafter described be, and the same is hereby removed, and the said deed and contract as to said defendants so disclaiming and the plaintiffs, J. L. Sweet, Leona S. Herd, Lucy S. Wilson, and F. H. Sweet, and the minors, Albert Orlando Sweet, Mira E. Sweet, Joseph L.
97 Sweet, Lucy Sweet, and Emory Sweet and their guardian A. W. Putnam, be and the same are hereby held for naught and that the said defendants so disclaiming go hence without day and recover of said plaintiffs their costs in this behalf expended.

It is further ordered, considered and adjudged by the court that the said Plaintiffs, J. L. Sweet, Leona S. Herd, Lucy S. Wilson and F. H. Sweet, and the minors, Albert Orlando Sweet, Mira E. Sweet, Joseph L. Sweet, Lucy Sweet and Emory Sweet joined by their guardian, A. W. Putnam, recover of the defendants J. G. Bogard, J. H. Simpson, H. Y. Hoover, L. J. Edwards, G. S. Huling, S. C. Van Leer, J. A. Powers, M. C. Logan, Addie V. Logan, James W. Logan, Belle Pendergraft, Myrtle E. Pendergraft, Claude D. Pendergraft, Conway Pendergraft, Lillie V. Pendergraft, Isom P. Pendergraft and William Pendergraft, being defendants who answered and recover of the defendants, E. R. Fletcher, E. A. Winkler, Alice Edwards, Margie Edwards, and Alcie Edwards, being defendants who failed to answer, the removal of all cloud upon plaintiffs petition, to the following described real estate, lands and premises, to wit:

All of the town lots in the City of Mangum, Greer County, Oklahoma, formerly Greer County, Texas, as appears upon the corrected plat of said town filed and recorded in the County Clerk's office of said Greer County, in deed record of said County in volume 2 page 35 to which record reference is here made for more complete description of this land, save and except the following lots as shown by said mentioned plat, which are not included in this decree to wit:

Lots Nos. 5, 8 and 3 in Block 2;
Lots Nos. 3 and 1 in block 25;
Lots 1, 2, 3, 5, 6, and 4 in block 13;
Lots, 1, 2, 3, 4, 5, and 6 in block 11;
Lots Nos. 6, 5, 3, 4, and 2 in block 19;
98 Lots. Nos. 5 and 7 in block No. 3;
Lots. Nos. 2, 6, 3, 4, and 5 in block No. 15;
Lots. 1, 2, 3, 4, 5, and 6 in block No. 10;
Lots. 1, 2, 3, 4, 5, and 6 in block No. 9;
Lots. No-. 1, 2, 3, 4, 5, and 6 in block No. 12;
Lots. 1, 2, and 5 in block No. 8;
Lots. No-. 6, 1, 5, and 4 in block No. 16;
Lots Nos. 6, 3, 2, 5 and 4 in block No. 18.
Lot. No. 1 in Block No. 39;
Lot No. 2 in Block No. 20;
Lots Nos. 2 and 3 in Block No. 33;
Lots. Nos. 1 and 2 in block No. 24;
Lot No. 1 in block No. 14;
Lot No. 1 in block No. 26;
Lots. Nos. 1, 2, 3, and 4 in block No. 28;
Lots. 3 and 4 in block No. 6;
Lot No. 1, in block No. 32;
Lot No. 1 in block 29;
Lots. No-. 1 and 2 in block No. 17;
Lots No-. 2, 3, and 4 in block No. 26;
Lot No. 1 in Block No. 15;

All of Block No. 1, also Lots No-. 2, 3, and 4 in Block No. 26 and lots No. 1 in Block 15.

And the deed and contract mentioned in plaintiff's petition are hereby cancelled and held for naught and that plaintiffs be and they are hereby vested with the title to said lots, lands and premises mentioned in said map and plat of the town of Mangum aforesaid, save and except the lots and blocks above describe as excepted and that the defendants be divested of all right and title thereto and the plaintiffs recover of the defendants, J. G. Bogard, J. H. Simpson,
H. Y. Hoover, L. J. Edwards, G. S. Huling, S. C. Van Leer,
99 J. A. Powers, M. C. Logan, Addie V. Logan, James L. Logan,
Claud D. Pendergraft, Conway Pendergraft, Myrtle E. Pendergraft, Lillie V. Pendergraft, Ison P. Pendergraft, and William Pendergraft, all the costs in this cause incurred for which execution may issue.

On August 21, 1903, the defendants, J. G. Bogard, J. H. Simpson, H. Y. Hoover, L. J. Edwards, G. S. Huling, S. C. Van Leer, J. A. Powers, M. C. Logan, *pro se* and as next friend of Addie V. Logan and James W. Logan, minors, and Belle Pendergraft, *pro se* and as

next friend of Claud D. Pendergraft, Conway Pendergraft, Myrtle E. Pendergraft, Isom P. Pendergraft, and William Pendergraft, minors filed their motion for a new trial.

And now on this 16th day of October, 1903, the above motion for a new trial came on to be heard. The Court after hearing said motion and the argument of counsel for plaintiff and defendant overruled said motion, to which action of the court in overruling said motion the defendants then and there in open court excepted and still except and gave notice of appeal to the Supreme Court of this Territory.

October 16, 1903, it is ordered by the court that 15 days be allowed said defendants from this date to prepare and present a case-made and five days be allowed the plaintiffs to suggest amendments thereto and three days to settle the same.

JAMES K. BEAUCHAMP, *Judge.*

O. K.:
GARRETT & GARRETT,
Plaintiff's Att'ys..

100 TERRITORY OF OKLAHOMA, *Greer County:*

The foregoing contains a true and complete statement of all the pleadings, motions, orders, evidence, findings and proceedings upon which judgment was rendered and the judgment in said cause.

SHARTEL, KEATON & WELLS,
Att'ys for Defendants.

Filed Oct. 15, 1904.
BENJ. F. HEGLER,
Clerk Supreme Court,
By JESSIE PARDOE, *Deputy.*

101 TERRITORY OF OKLAHOMA, *Greer County, ss:*

We, the undersigned attorneys for the plaintiff in the foregoing suit certify that the foregoing case made was duly served on us on the 31 day of October, 1903, and that the same is correct and that we have no amendments to suggest.

GARRETT & GARRETT,
Attorneys for Plaintiffs.

Filed Oct. 15, 1904.
BENJ. F. HEGLER,
Clerk Supreme Court,
By JESSIE PARDOE, *Deputy.*

102 TERRITORY OF OKLAHOMA, *Greer County:*

We, the undersigned attorneys for the plaintiff in the foregoing suit, certify that the foregoing case was duly served on us this 19 day of Oct., 1903. GARRETT & GARRETT,
Attorneys for Plaintiffs.

Filed Oct. 15, 1904.
BENJ. F. HEGLER,
Clerk Supreme Court,
By JESSIE PARDOE, *Deputy.*

The foregoing case is correct, we have no amendments to suggest.

GARRETT & GARRETT,
Attorneys for Plaintiffs.

Filed Oct. 15, 1904.
BENJ. F. HEGLER,
Clerk Supreme Court,
By JESSIE PARDOE, *Deputy.*

103 TERRITORY OF OKLAHOMA, *Greer County:*

This is to certify that the foregoing above case made and the amendments thereto have been duly served in due time, and the amendments thereto duly suggested, and the same duly submitted to me for settlement and signing, as required by law, by the parties to said cause; that the same as above set forth and as corrected by me, is true and correct, and contains a true and correct statement of all the pleadings, motions, orders, evidence, findings, proceedings, and judgments had in such cause; and I hereby settle, allow, certify and sign the same as true and correct, and hereby order that the clerk of the District Court attest the same with the seal of said court and file the same as of record.

Witness my hand at Mangum this 20 day of February 1904.

JAMES K. BEAUCHAMP, *Judge.*

Attest:
[SEAL.] J. P. RENSHAW, *Clerk.*

Filed Oct. 15, 1904.
BENJ. F. HEGLER,
Clerk Supreme Court,
By JESSIE PARDOE, *Deputy.*

Filed Feb'y 20, 1904.
J. P. RENSHAW, *Clerk.*

104 Case-made endorsed as follows: No. 1623. J. G. Bougard, *et al.* Plaintiffs in error, *vs.* F. H. Sweet, *et al.*, Defendants in Error. Petition in error and Case made. Filed February 20, 1904, J. P. Renshaw, Clerk. Filed Oct. 15, 1904, Benj. F. Hegler, Clerk Supreme Court, by Jessie Pardoe, Deputy.

105 And afterward, at the January, 1905, Term of said Supreme Court, on the seventh day of January, 1905, the following proceedings was had in said cause, to wit:

#1623.

J. G. BOUGARD, J. H. SIMPSON, ET AL., Plaintiffs in Error,
vs.
F. H. SWEET, J. L. SWEET, ET AL., Defendants in Error.

Comes now James R. Keaton, of counsel for plaintiffs in error, and makes oral argument herein. And cause is submitted on record, briefs and oral argument.

106 And afterward, at the June, 1905, Term of said Supreme Court, on the Fourteenth day of June, 1905, the following proceeding was had in said cause, to wit:

#1623.

J. G. BOGARD, J. H. SIMPSON, ET AL., Plaintiffs in Error,
vs.
F. H. SWEET, J. L. SWEET, ET AL., Defendants in Error.

And now the Court grants leave to both parties to file additional briefs herein.

107 And afterward, at the June Term, 1905, of said Supreme Court, on the Sixteenth day of June, 1905, the following proceeding was had in said cause, to wit:

#1623.

J. G. BOGARD, J. H. SIMPSON, ET AL., Plaintiffs in Error,
vs.
F. H. SWEET, J. L. SWEET, ET AL., Defendants in Error.

Ordered by the Court, that leave be given to file briefs herein as per stipulation of the parties.

108 And afterward, at the June, 1906, Term of said Supreme Court, on the Sixth day of September, 1906, the following proceeding was had in said cause, to wit:

#1623.

J. G. BOGARD ET AL., Plaintiffs in Error,
vs.
F. H. SWEET ET AL., Defendants in Error.

And now this cause comes on for final decision and determination by the Court upon the record, briefs and oral argument submitted therein.

And the Court having duly considered the same, and being fully advised in the premises, finds: That the judgment of the lower court in this cause should be affirmed, at the cost of plaintiffs in error.

It is therefore ordered and adjudged by the Court, that the judgment of the District Court of Greer County in this cause, be and the same is hereby affirmed, at the cost of plaintiffs in error.

Opinion by Pancoast, J., all the Justices concurring.

Which opinion reads in words and figures as follows, to wit:

109 In the Supreme Court of the Territory of Oklahoma, June Term, 1906.

Filed September 6, 1906.

No. 1623.

J. G. BOGARD ET AL., Plaintiffs in Error,
vs.
F. H. SWEET ET AL., Defendants in Error.

Syllabus.

1. Cancellation, Proper, When.—(Where S purchases from the State of Texas land in what is now Greer County, Oklahoma, and plats the same as a portion of the townsite of Mangum, and thereafter enters into a contract with certain persons for the establishment of a newspaper, wherein it is agreed that such persons shall form a corporation, and run said newspaper and sell S's townsite property, and collect certain notes held by him, paying two-thirds of all amounts received to said S, themselves retaining one-third; and where S, in pursuance of said contract, as a matter of convenience, executes and delivers to such persons a warranty deed to said land, and such corporation is never formed, but the project is abandoned, and the deed, together with the notes returned to S, *held*, that S in such case is entitled to a decree cancelling such contract, and the deed executed thereunder.)

Error from the District Court of Greer County.

James K. Beauchamp, Trial Judge.

Affirmed.

Shartel, Keaton & Wells and J. A. Powers, for plaintiffs in error.
Garrett & Garrett and Chas. M. Thacker, for defendants in error.

Statement of the Case.

This was an action commenced in the District Court of Greer County by H. C. Sweet and others, against J. G. Bogard *et al.*, for the cancellation of a deed to certain town lots in the city of Mangum, Greer County, and a certain contract made in connection therewith. A number of the defendants answered, disclaiming any interest in the property; and, the plaintiff having died, the action was revived in the name of the heirs. Judgment was rendered, cancelling the deed and contract as prayed for in the petition.

The record discloses that at a date when Greer County was claimed to be a part of and under the jurisdiction of the State of Texas, H.

C. Sweet purchased the land in controversy from that State; and while claiming the same under such title, platted it into town lots which became, and were at the time of the action, a part of the townsite of the city of Mangum. H. C. Sweet, desiring to aid in the upbuilding of a newspaper and the town generally, entered into a contract with the defendants in error, and others, to allow the plaintiffs in error to sell his townsite property, and to collect certain notes which he then had, for property by him theretofore sold, the understanding and agreement being that in order to facilitate the business, the plaintiffs in error were to form a corporation for the purpose of running the newspaper and selling the real estate, it being agreed that the corporation should sell the property and collect the notes, and pay to Sweet two-thirds of the amount of the sales, and retain one-third thereof as their commission.

As a matter of convenience, in the carrying out of the contract, a deed was made by Sweet and wife to all of the property. Afterwards an attempt was made to form the corporation. There being no law in Texas under which such a corporation could be formed, that portion of the scheme failed, and as shown by the record the project was dropped by almost all, if not entirely all of the parties connected therewith, and the deed, although recorded, was returned to Sweet, together with the notes.

Soon after, the decision was rendered by the Supreme Court of the United States, holding that Greer County did not belong to the State of Texas, but was a part of Oklahoma. Sweet, finding that his title from the State of Texas was of no validity, entered the land under act of Congress approved January 18, 1897. The deed made by Sweet and wife to the company, however, having been recorded, constituted a cloud upon his title, hence this action to remove the same.

110 *Opinion of the Court by Pancoast, J.*

The contention of the plaintiffs in error is that the contract is one of monetary consideration, that mentioned in the deed being ten dollars, and that the title after acquired by Sweet from the United States should inure to the benefit of the grantees, and that there is no such case for equity as will warrant the court in cancelling the deed and contract. Very elaborate briefs have been filed, and the case has been argued upon numerous different grounds, many of which we think have no application to the facts in the case, or to any rule that should govern the court in its decision. In fact, many of the questions argued have served only to confuse the court in arriving at the real contention in the case.

The evidence abundantly shows that Sweet's purpose in making the contract was to aid in the upbuilding and advertising of the town generally, and the printing of a newspaper. In order to do this, he placed this property in the hands of the parties, in order that they might sell the same and receive compensation therefor. By this contract, the parties became his agents, and he was entitled to a reconveyance of all of the unsold property. All the contentions of

Sweet were conceded by a large number of the persons interested. Some few, however, refused to reconvey, and set up claims to the property, but we cannot see upon what theory they can claim to be the owners of the property as against Sweet and his heirs.

There was a large number of lots transferred, and a large number of notes placed in the company's hands for collection. The consideration mentioned in the deed is ten dollars, a mere nominal sum. The amount they should receive as compensation was one third of the sales and from collections. As testified to by some of the witnesses, they soon found that the expense of collecting the notes would be more than their fees, and they simply abandoned any attempt to carry out the provisions of the contract on their part. (One of the parties testified he delivered the deed back to Sweet, all supposing that would be all sufficient.)

There is nothing in the case that requires the application of any rule of law, other than those which the above statement justifies. There is absolutely no defense to this action, and the judgment of the trial court was certainly the correct one.

Finding no error in the record, the judgment of the court below is affirmed. All the justices concurring.

111 In the Supreme Court of the Territory of Oklahoma.

UNITED STATES OF AMERICA,
Territory of Oklahoma, ss:

Certificate.

I, Benj. F. Hegler, Clerk of the Supreme Court of the Territory of Oklahoma, do hereby certify that the foregoing 110 pages, numbered from 1 to 110, inclusive, are a full, true and complete transcript of the record and all proceedings in said Supreme Court in the case of J. G. Bogard *et al.*, Plaintiffs in error, *vs.* F. H. Sweet *et al.*, Defendants in error, as the same remain upon the files and records of said Supreme Court.

In testimony whereof I hereunto subscribe my name and affix the seal of said Supreme Court, at the City of Guthrie, this 8th day of November, 1906.

[Seal Supreme Court, Territory of Oklahoma.]

BENJ. F. HEGLER,
Clerk of the Supreme Court of the Territory of Oklahoma.

Endorsed on cover: File No. 20,461. Oklahoma Territory supreme court. Term No. 156. J. G. Bogard, J. H. Simpson, H. Y. Hoover *et al.*, appellants, *vs.* F. H. Sweet, J. L. Sweet, Leona S. Herd *et al.* Filed November 19th, 1906. File No. 20,461.